

federal register

April 22, 1974—Pages 14177-14325

MONDAY, APRIL 22, 1974

WASHINGTON, D.C.

Volume 39 ■ Number 78

Pages 14177-14325

PART I



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This listing does not affect the legal status of any document published in this issue. Detailed table of contents appears inside.

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federal register

Phone 523-5240

Area Code 202



Published daily, Monday through Friday (no publication on Saturdays, Sundays, or on official Federal holidays), by the Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

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List of CFR Parts Affected

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Title 3—The President

PROCLAMATION 4286

National Coin Week 1974

By the President of the United States of America

A Proclamation

Since the beginning of history, coins have helped to tell the story of civilization. They frequently reflect the economic development of their country of origin as well as the scientific advancement and artistic values of the people who produce and use them. Today, more than ten million Americans collect coins both for pleasure and for profit.

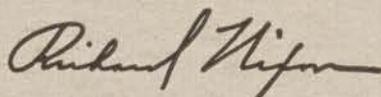
In honor of our Bicentennial year, we are changing the designs on the backs of three United States coins. The new designs were selected through competition among the Nation's sculptors and will appear on the backs of the dollar, half dollar, and quarter. The double date 1776-1976 will appear on the front of the three coins.

When in circulation, these Bicentennial coins will reach every citizen and serve as reminders of our rich national heritage and continuing dedication to freedom and self-government.

NOW, THEREFORE, I, RICHARD NIXON, President of the United States of America, in recognition of this worthwhile hobby and of the significance of coins in marking the Bicentennial, do hereby designate the week beginning April 21, 1974, as National Coin Week.

Observance of National Coin Week will give us all an opportunity to reflect upon the designs, mottos, and symbols that appear on our coins. The word "Liberty" has been inscribed on our coins since 1792 as provided by the act directing our fledgling Nation to produce its own coins. Then, as now, the inscription serves as a constant reminder of our most precious national possession, won for us all in the American Revolution.

IN WITNESS WHEREOF, I have hereunto set my hand this nineteenth day of April, in the year of our Lord nineteen hundred seventy-four, and of the Independence of the United States of America the one hundred ninety-eighth.



[FR Doc.74-9303 Filed 4-19-74;12:10 pm]

Presidential Documents

The 20th President

William McKinley

January 18, 1897

Dear Mr. Secretary:

I have the honor to acknowledge

the receipt of your letter of the 17th inst.

and in reply to inform you that the same

has been forwarded to the proper authorities

for their consideration.

I am, Sir, very respectfully,

Your obedient servant,

William McKinley

White House, Washington, D.C.

Very truly yours,

Wm. McKinley

Secretary of State

Washington, D.C.

Enclosure

Very truly yours,

Wm. McKinley

Secretary of State

Washington, D.C.

Enclosure

Very truly yours,

Wm. McKinley

Secretary of State

Washington, D.C.

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Wm. McKinley

Secretary of State

Washington, D.C.

Enclosure

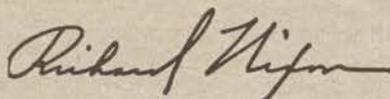
EXECUTIVE ORDER 11779

Delegating the Authority of the President Under Section 9 of the United Nations Participation Act, as Amended, to the Secretary of State

By virtue of the authority vested in me by section 301 of title 3 of the United States Code, and as President of the United States, it is hereby ordered as follows:

Section 4 of Executive Order No. 11609 of July 22, 1971, is amended by designating the present text as subsection (a) and by adding the following new subsection (b)—

“(b) The Secretary of State is hereby designated and empowered to exercise the authority of the President under section 9 of the United Nations Participation Act of 1945 (59 Stat. 619), as amended by section 15 of Public Law 93-126 (87 Stat. 454-455).”



THE WHITE HOUSE,
April 19, 1974.

[FR Doc.74-9304 Filed 4-19-74;12:11 pm]

Rules and Regulations

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

Title 7—Agriculture

CHAPTER IX—AGRICULTURAL MARKETING SERVICE (MARKETING AGREEMENTS AND ORDERS; FRUITS, VEGETABLES, NUTS), DEPARTMENT OF AGRICULTURE

[Valencia Orange Reg. 460, Amdt. 1]

PART 908—VALENCIA ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

Limitation of Handling

This regulation increases the quantity of California-Arizona Valencia oranges that may be shipped to fresh market during the weekly regulation period April 12-18, 1974. The quantity that may be shipped is increased due to improved market conditions for California-Arizona Valencia oranges. The regulation and this amendment are issued pursuant to the Agricultural Marketing Agreement Act of 1937, as amended, and Marketing Order No. 908.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 908, as amended (7 CFR Part 908), regulating the handling of Valencia oranges grown in Arizona and designated part of California, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674) and upon the basis of the recommendation and information submitted by the Valencia Orange Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such Valencia oranges, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) The need for an increase in the quantity of oranges available for handling during the current week results from changes that have taken place in the marketing situation since the issuance of Valencia Orange Regulation 460 (39 FR 13160). The marketing picture now indicates that there is a greater demand for Valencia oranges than existed when the regulation was made effective. Therefore, in order to provide an opportunity for handlers to handle a sufficient volume of Valencia oranges to fill the current demand thereby making a greater quantity of Valencia oranges available to meet such increased demand, the regulation should be amended, as hereinafter set forth.

(3) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, en-

gage in public rule-making procedure, and postpone the effective date of this amendment until 30 days after publication thereof in the FEDERAL REGISTER (5 U.S.C. 553) because the time intervening between the date when information upon which this amendment is based became available and the time when this amendment must become effective in order to effectuate the declared policy of the act is insufficient, and this amendment relieves restriction on the handling of Valencia oranges grown in Arizona and designated part of California.

(b) *Order, as amended.* The provisions in paragraph (b) (1) (iii) of § 908.760 (Valencia Orange Regulation 460 (39 FR 13160)) are hereby amended to read as follows: "(iii) District 3: 260,000 Cartons."

(Secs. 1-19, 48 Stat. 31, as amended; (7 U.S.C. 601-674))

Dated: April 17, 1974.

CHARLES R. BRADER,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc.74-9158 Filed 4-19-74; 8:45 am]

CHAPTER XIV—COMMODITY CREDIT CORPORATION, DEPARTMENT OF AGRICULTURE

SUBCHAPTER B—LOANS, PURCHASES, AND OTHER OPERATIONS

[Cooperative Marketing Associations, Price Support Eligibility Regs., Amdt. 1]

PART 1425—COOPERATIVE MARKETING ASSOCIATIONS

Subpart—Eligibility Requirements for Price Support

MISCELLANEOUS AMENDMENTS

There was published on March 5, 1974, in the FEDERAL REGISTER a notice of proposed rule making (39 FR 8334), regarding changes in the eligibility requirements for participation in authorized price support programs. Interested persons were given until April 4, 1974, to submit comments and suggestions to the proposed amendments. No comments or suggestions were received. Therefore, the amendment is adopted as originally published, without change as set forth below:

1. Correct the word "or" in line 4 of § 1425.4(a) to read "and".

2. Amend paragraph (b) of § 1425.4 to read as follows:

§ 1425.4 Ownership and control.

(b) *Control.* The organization and operation of the cooperative shall be under

the control of its active producer members and member cooperatives which are owned and controlled by their active producer members. A cooperative shall be considered so controlled if more than 50 percent of its membership consists of active producer members, or member cooperatives which are owned and controlled by their active producer members. A director shall be an active member, a representative of an active member serving in the capacity of a farm manager or its equivalent (including an officer of a corporation and a partner in partnership), or an officer or employee of a member cooperative which is owned and controlled by its active members and shall be elected by active members except when selected to fill the unexpired term of a director so elected.

3. Correct the word "application" in line 3 of § 1425.5(c) to read "applicant".

4. Amend paragraph (d) (1) of § 1425.5 to read as follows:

§ 1425.5 Charter and bylaw provisions.

(d)

(1) Nominations for election of delegates and directors shall be made by secret balloting, nominating committee, petition of members, or from the floor; and,

5. Amend paragraph (b) of § 1425.21 to read as follows:

§ 1425.21 Definitions.

(b) *Active member.* The term "active member" shall mean a member of a cooperative who has utilized the services offered by a cooperative for marketing his commodity or purchasing production supplies for his farming operation in one of the three preceding crop years or such shorter period as may be provided in the cooperative's articles of incorporation or bylaws.

Effective date: April 22, 1974.

Signed at Washington, D.C., on April 16, 1974.

GLENN A. WEIR,
Acting Executive Vice President,
Commodity Credit Corporation.

[FR Doc.74-9156 Filed 4-19-74; 8:45 am]

[Seed Loan Cotton Loan Program Regs.;
Amdt. 1]

PART 1427—COTTON

**Subpart—Seed Cotton Loan Program
Regulations**

**INCREASE IN LOAN SERVICE FEE AND
MISCELLANEOUS CHARGES**

Correction

In FR Doc. 74-8206, appearing at page 12983, in the issue of Wednesday, April 10, 1974, the second word in the third line of § 1427.172, which now reads "risk", should read "rick".

**CHAPTER XVIII—FARMERS HOME ADMINISTRATION,
DEPARTMENT OF AGRICULTURE**

**SUBCHAPTER B—LOANS AND GRANTS
PRIMARILY FOR REAL ESTATE PURPOSES**

[FHA Instruction 442.12]

**PART 1823—ASSOCIATION LOANS AND
GRANTS—COMMUNITY FACILITIES,
DEVELOPMENT, CONSERVATION,
UTILIZATION**

**Private Business Enterprises; Department
of Labor Certification**

Section 1823.454 of Subpart O of 7 CFR Part 1823, (38 FR 29036) is amended to revise the Department of Labor certification requirements for grant approval. Since the change is minor in nature and no substantive change in the regulation is effected, notice and public procedure thereon are unnecessary. As amended, § 1823.454 reads as follows:

§ 1823.454 Department of Labor determination.

Grants shall not be made if the Secretary of Labor certifies within 60 days after the matter has been submitted to him by the Secretary of Agriculture that the provisions of § 1823.453 (c) and (d) have not been complied with. Information for obtaining this certification will be submitted in writing to FHA. The information will be submitted to the Department of Labor by FHA. Grant approval may be given and funds may be obligated subject to the Department of Labor certification being received.

(7 U.S.C. 1989; delegation of authority by the Sec. of Agri., 38 FR 14944, 14948, 7 CFR 2.23; delegation of authority by the Asst. Sec. for Rural Development, 38 FR 14944, 14952, 7 CFR 2.70.)

Effective date. This amendment is effective April 22, 1974.

Dated: April 5, 1974.

FRANK B. ELLIOTT,
Administrator,
Farmers Home Administration.

[FR Doc. 74-9150 Filed 4-19-74; 8:45 am]

Title 10—Energy

**CHAPTER I—ATOMIC ENERGY
COMMISSION**

**PART 50—LICENSING OF PRODUCTION
AND UTILIZATION FACILITIES**

**Environmental Effects of the Uranium Fuel
Cycle**

On November 15, 1972, the Atomic Energy Commission published in the FEDERAL REGISTER a notice of consideration of possible amendments to Appendix D, Interim Statement of General Policy and Procedure: Implementation of the National Environmental Policy Act, 10 CFR Part 50, Licensing of Production and Utilization Facilities (37 FR 24191). The amendments proposed here supplement our established rules for fulfilling section 102(2)(C) procedures of NEPA. The amendments address the question whether to consider the environmental effects associated with the uranium fuel cycle in the individual cost-benefit analyses for light-water-cooled nuclear power reactors. The Atomic Safety and Licensing Appeal Board had earlier held that some such effects should be considered while others should not.¹

The proposed amendments set forth two alternative approaches to considering the environmental effects associated with the uranium fuel cycle. Under the first, such environmental effects would not have to be considered in applicants' environmental reports and Commission detailed statements of environmental considerations since, if factored into individual cost-benefit analyses, they would be sufficiently small as not to affect significantly the resultant conclusion. Under the second alternative, the environmental effect associated with the uranium fuel cycle, albeit small, would be factored into individual cost-benefit analyses in the form of numerical values derived from the instant proceeding. The second alternative has been adopted by the Commission as an effective rule, with certain clarifying and editorial changes. Insofar as this rule differs from the Appeal Board decisions in "Vermont Yankee" supra, those decisions have no further precedential significance. The Commission also notes that adoption of this amendment is without prejudice to consideration of whether or not a full generic environmental impact statement on the uranium fuel cycle should be issued pursuant to 10 CFR Parts 11 and 51 of the Commission's regulations.

The FEDERAL REGISTER notice announced the availability for comment of the "Environmental Survey of the Nuclear Fuel Cycle," dated November 1972, prepared by the Commission's

¹ Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), ALAB-56, ALAB-73 (June 6, 1972 and October 11, 1972).

Regulatory staff. This document was designed to serve as a primary data base for the proposed amendment and not as an analysis of alternatives and costs and benefits of the entire uranium fuel cycle. Indeed, certain portions of that overall fuel cycle are undergoing separate examination and are not involved in this proceeding. These include: (i) An environmental statement in support of a recommendation by the General Manager to continue the present program for developing Federal repositories for commercial high level wastes (38 FR 29350), and (ii) a separate rule making proceeding examining transportation of UO₂ fuel to and from light water reactors and transportation of solid wastes from such reactors to waste burial grounds (38 FR 3334).

In addition, another fuel cycle for light water reactors is under study by the staff. Typical programs underway on this subject include: (i) Preparation of a generic environmental impact statement concerning potential programs for recycling plutonium in commercial light-water reactors (39 FR 5536), (ii) analysis of methods for disposal of wastes contaminated with plutonium, and (iii) an environmental analysis of the proposed amendment to 10 CFR 71 that would require significant quantities of plutonium to be shipped as a solid in packages providing at least double containment (38 FR 20482).

The survey described stages of the fuel cycle for the purpose of determining whether the cost-benefit analysis required by NEPA and our regulation (10 CFR Part 50, Appendix D) for environmental impact studies in licensing proceedings should include numbers quantifying effects of the uranium fuel cycle. The purpose of this proceeding was to make determinations as to whether certain elements should be factored into impact statements to be utilized in other proceedings; the purpose was not to undertake a full environmental review of the uranium fuel cycle. In short, this proceeding addresses a procedural question involving the implementation of NEPA's requirement for cost-benefit analyses in impact studies. For this reason, no environmental impact statement has been prepared in connection with the rule adopted today.

All interested persons were invited to submit written comments and suggestions in connection with the proposed amendments and the Environmental Survey within 60 days after publication of the notice in the FEDERAL REGISTER. In addition, an informal rule making hearing was held on February 1, 1973, to permit the presentation of written and oral views on the Environmental Survey and the alternative approaches to consideration of the environmental effects associated with the uranium fuel cycle.

On January 3, 1973, the Commission issued a Supplemental Notice setting forth the procedures which were to be followed in the informal rule making hearing (38 FR 50). The notice stated, among other things, that since the hearing would be part of a rule making rather than an adjudicatory proceeding, the provisions of Subpart G, Rules of General Applicability, of Part 2 of the Commission's rules of practice would not be applicable and that, therefore, such procedural features as discovery and cross-examination would not be utilized. The notice provided, however, that the participants in the hearing would be subject to questioning by the presiding hearing board. The notice further provided that at the conclusion of the hearing, the record was to be held open for a period of 30 days during which time any person could file supplementary written comments deemed appropriate in light of the hearing record. After the expiration of the 30-day period, the presiding hearing board, without rendering any decision or making any recommendation, was to forward the hearing transcript to the Commission together with an identification of issues raised at the hearing.

Written comments were received from 46 individuals and organizations representing Federal and State agencies, industry, public utilities, environmental and citizen groups, and private citizens. Participants in the informal rule making hearing included the Commission's Regulatory staff; the Environmental Protection Agency; the Mapleton Intervenor of Midland, Michigan; Westinghouse Electric Corporation; Consolidated National Intervenor and the Union of Concerned Scientists, jointly; the Atomic Industrial Forum; the Consolidated Utilities, composed of fourteen utilities appearing jointly; the New York State Department of Environmental Conservation; and the Minnesota Pollution Control Agency. In addition, two individual members of the public made limited appearances.

In its "Report to the Commission by the Nuclear Fuel Cycle Hearing Board," submitted on July 6, 1973, pursuant to a Supplemental Notice of Hearing published on January 3, 1973, the presiding hearing board identified a number of issues which it believed were raised at the hearing and in the written comments. The first issue identified concerned a challenge by CNI/UCS to the procedures used by the Commission for the hearing. That participant argued that for any rulemaking hearing dealing with the environmental effects of the nuclear fuel cycle on a generic basis to be legally valid, the hearing must incorporate the same adjudicatory procedural features used in individual production and utilization facility licensing proceedings, including the rights of discovery and cross-examination. On the basis of this contention, the participant recommended adoption of a "third alternative" which would provide for an "on-going generic hearing" requiring preparation and circulation of an environmental im-

part statement. Under this alternative, parties to individual reactor licensing proceedings would be permitted to participate in an "adjudicatory" rule making proceeding, the findings of which would be incorporated into the record of individual licensing hearings.

The Commission has considered this challenge to the legal validity of the present rule making proceeding and the arguments in opposition which were filed by other parties. In our view, the procedures adopted provide a more than adequate basis for formulation of the rule we adopted. All parties were fully heard. Nothing offered was excluded. The record does not indicate that any evidentiary material would have been received under different procedures. Nor did the proponent of the strict "adjudicatory" approach make an offer of proof—or even remotely suggest—what substantive matters it would develop under difference procedures. In addition, we note that all documents including the Survey were available to the parties several weeks before the hearing, and the Regulatory staff, though not requested to do so, made available various drafts and handwritten notes.² Under all of the circumstances, we conclude that adjudicatory type procedures were not warranted here.

The second area in which issues were identified by the presiding hearing board related to the scope and depth of the underlying Environmental Survey. One issue was whether, in light of the comments in the record, substantial revision of the survey should be made prior to adoption of a final rule. Also identified was the issue of whether the Administrative Procedure Act requires reopening of the proceeding to permit comment on any revised survey and whether such reopened proceeding should be a proceeding conducted in the manner of the original proceeding in which comment would be invited on all aspects of the nuclear fuel cycle; or whether such proceeding should be limited to comment only on the revisions to the Survey.

In discussing the issues in this area, the presiding hearing board mentioned, among other things, the factors of safeguards against sabotage and diversion of nuclear materials and plutonium handling. The board also indicated that arguments had been advanced that the Survey was unreliable with respect to high level waste disposal in that facilities for such disposal are presently non-existent.

Sabotage and diversion receive considerable attention in licensing of individual fuel cycle facilities. The issuance of any special nuclear material license involving significant quantities of such material is contingent upon a finding by

² Some or all of these items might not have been provided under rigid adjudicatory rules. For example, on the one occasion when CNI/UCS requested a specific document, it was promptly made available, even though it was an internal staff memorandum written for the Commissioners themselves.

the AEC that the required accountability and physical security systems are adequate to provide reasonable protection against acts of sabotage and diversion of materials. Beyond this, insofar as environmental impact is concerned, sabotage and diversion may be viewed in the context of possible contributing factors, among others, to accident conditions. The Environmental Survey does, in fact, consider a number of postulated accidents and their environmental effects. The postulated accidents thus considered in the Survey are deemed to be a reasonable representation of the environmental effects that could result from the more credible acts of sabotage.

Those aspects of the uranium fuel cycle which involve plutonium handling, namely recovery and storage, were described in the Environmental Survey. However, other forms of plutonium handling were not discussed in the survey because the survey is applicable only to light-water-power reactors using conventional uranium dioxide fuel. Reactors utilizing plutonium recycle fuel fall outside the Survey's scope of coverage and, therefore, the values in the Summary Table are inapplicable. As stated earlier, however, the Commission is presently drafting an environmental impact statement covering all aspects of the full-scale use of plutonium in light-water reactors, including the fuel cycle.

Considerable information was presented at the hearing on high level waste storage utilizing a retrievable surface storage facility. A description was given of such facility, the normal radiological effluents, and a maximum credible accident. The estimated normal annual radiological release was 0.005 curies. Although the ultimate capacity of the facility would be about 80,000 canisters of waste, corresponding to about 8,000 annual fuel requirements (AFR), the initial capacity will be substantially less. Even if one assumed that the annual release from the facility were associated with a single annual fuel requirement, the fission product release per annual fuel requirement would be 0.005 Ci/AFR. Since the release of solid fission products and actinides from the model reprocessing plant is estimated at 1,004 Ci/AFR, the omission of waste repository effluents from the original Environmental Survey did not materially affect the releases shown in the Summary Table. However, the 0.005 Ci/AFR value has been added to the 1,004 Ci/AFR value in the Summary Table for a combined total, when rounded off, of 1.01 Ci/AFR. While such a waste storage facility has not been constructed, preliminary conceptual designs have been developed using existing technology based on well established data and techniques.

The Commission believes that the Survey and hearing record provide an adequate data base for the regulation adopted. Revisions to the chemical effluents in Table S-3 have been made to reflect corrections or suggestions entered into the hearing record on UF₆ conversion facilities, UO₂ conversion plants and

mining operations. Minor corrections with respect to radioactive effluents have been made and in no case do these corrections increase the effluent effects by more than .25 percent of natural background. To conform the table precisely to the text of the Survey, the values for iodine-129 and 131 releases have been changed from .002 and .02 curies to .0024 and .024 curies, respectively. In addition, values for exposure of workers and the general public in the transportation of radioactive materials covered in the Survey have been added to the Summary Table. To incorporate these changes, to incorporate data on the retrievable surface storage facility in high level wastes described in the hearing, and to add information suggested in comments received as a part of the hearing record, the Environmental Survey has been revised and is being issued in revised form concurrently with promulgation of this amendment.² In view of the fact that these revisions are minor and reflect the record already developed, we see no occasion for reopening this proceeding.

A third area in which issues were identified by the presiding hearing board relates to the Environmental Survey's use of qualitatively styled and allegedly undefined descriptive phrases for its conclusions regarding the magnitude of the environmental impact. One issue is whether the Survey should be revised to define more precisely the magnitude and anticipated ranges of variables pertinent to an assessment of the environmental impact. The Summary Table, S-3, to be used as a basis for evaluating the environmental effects in a cost-benefit analysis for a reactor quantifies all releases, and relates maximum effects to recognizable standards where practical. The Commission believes that providing ranges of variables relevant to assessing environmental impact would serve little or no constructive purpose here since conservatism was utilized in deriving the Summary Table values, and thus, these values already reflect an environmental impact greater than that which is truly anticipated. In addition, developing a range of values would have required separate investigations of multiple factors at over 150 mines, some 19 mills, 2 conversion plants, 3 enrichment plants, and 10 fuel fabrication facilities—to arrive at a range of values augmenting numbers already reflecting substantial conservatism.

Another issue identified in this area is whether more extensive analyses of the long-term environmental effects of waste storage and disposal are necessary to sustain the validity of the conclusions in the Survey. The Commission believes that sufficient data were presented regarding engineered waste storage facilities to justify the conclusion that the

contribution of waste storage and disposal to the total environmental impact of the fuel cycle is relatively insignificant. However, as more information on high level waste storage and disposal systems becomes available as a result of the environmental impact statement on high level waste storage referenced earlier, a more definitive assessment of the environmental impact can be undertaken and the Survey revised accordingly, as appropriate.

The third issue raised in this area is whether the averaging of environmental effects and the use of models for each fuel cycle step produced values sufficiently conservative to warrant the Survey's conclusion of negligible environmental impact. The "model" facilities defined for the Environmental Survey represent the true industry average for the UF₆ conversion, enrichment, and reprocessing portions of the fuel cycle. The model mill size chosen is near the upper range of mill sizes, and the major environmental effects from milling result from the airborne effluents and tailings waste disposal steps common to all mills. Choosing a relatively large mill as a basis tended to make local environmental effects large, and hence conservative. The fuel fabrication model plant is typical of two plants that produce about 60 percent of the fuel manufactured in the United States today and conservatively represents the remainder. The effluents from the model facility were estimated without taking credit for recently installed pollution-abatement equipment and the distance from the plant to the near site boundary of the model represents the smallest distance of any actual fuel fabrication plant. These model and effluent characteristics produce conservative estimates of environmental effects.

A fourth area in which the hearing board identified an issue relates to suggestions for revision and re-examination of the Environmental Survey at periodic intervals. While the Commission agrees with the suggestions that the Survey be re-examined from time to time to appropriately accommodate new technology and information, it does not believe it necessary or advisable to impose any specific time limit. In our view, revision should be based on growth in the data base, not on any fixed and arbitrary time period. Should future revisions to the Survey necessitate changes in the Summary Table, further rule making will be undertaken and the public afforded an opportunity for comment.

A fifth issue identified by the hearing board is whether any provision should be made for exempting or limiting the applicability of a final rule insofar as pending licensing cases are concerned. In view of the fact that the environmental effects of the uranium fuel cycle have been shown to be relatively insignificant, the Commission believes that it is unnecessary to apply the amendment to applicant's environmental reports submitted prior to its effective date or to Final Environmental Statements for which Draft Environmental Statements have been circulated for comment prior

to the effective date. However, Draft Environmental Statements prepared but not circulated for comment prior to the effective date will be revised in accordance with the provisions of the amendment.

The sixth issue identified is whether the Commission should re-examine the proposed "Alternatives" in light of the record of the proceeding to determine whether modifications are necessary or desirable. In reviewing the record of the rule making hearing the Commission finds general approval for its generic approach to the consideration to be given to the environmental effects associated with the uranium fuel cycle. Many participants advocated adoption of one alternative or the other, other participants proposed modified versions of the alternatives, and one participant advocated adoption of a third alternative which was discussed earlier. After examining these proposals, and after re-examining its own proposed alternatives, the Commission has adopted a slightly modified version of Alternative 2. The Commission, as did many of the hearing participants and commentators, favors the approach of Alternative 2 over that of Alternative 1 because the former conforms with the requirements of subsections 3 and 8 of section A of Appendix D to 10 CFR Part 50 in that it quantifies, to the fullest extent practicable, the environmental effects of the uranium fuel cycle in individual cost-benefit analyses. Incorporation of the Summary Table values into cost-benefit analyses in environmental reports and detailed statements will also help to assure more complete and meaningful documents. The changes in the effective amendment are clarifying and editorial in nature.

The seventh issue identified is whether further clarification is necessary to make clear that the Environmental Survey and the Summary Table of values are purely descriptive and are not intended as operating limits which may be imposed in licensing and regulatory actions with respect to the various fuel cycle facilities. Neither the effective amendment nor the Environmental Survey state or imply that the values in the Summary Table are to be imposed as operating limits on present and future fuel cycle facilities. Such limits are established and governed by other AEC regulations, principally, the provisions of Part 20 of Title 10 of the Code of Federal Regulations, "Standards for Protection Against Radiation." Further clarification is considered unnecessary.

The presiding hearing board raised two additional items which it believed merited Commission attention. The first was more in the nature of a suggestion to the Commission that the Regulatory staff be directed to assure the ready availability of the background references, reference materials, and various calculations which served as the basis for the conclusions in the Survey. Copies of all non-copyrighted material, together with prior drafts of the Environmental Statement marked up by the staff, and over 100 pages of handwritten calculations

² Among other things, the revised Survey refers to and gives excerpts from an analysis by the Environmental Protection Agency that show that the CNL/UGS analysis of the Nuclear Fuel Services operation does not accurately represent the most recent operating history of NFS.

were given to the Public Document Room on January 5, 1973. Therefore, the Commission believes that the staff had already complied with this suggested directive by making these background references, uncopyrighted reference materials, previous drafts and the various calculations available in the AEC's Public Document Room.

The second item referred to is whether the Environmental Survey should have discussed alternative processes with regard to fuel cycle operations. The purpose of the Survey was to provide a data base from which numerical values could be derived which would reflect the environmental impact associated with the uranium fuel cycle. These values would then be factored into cost-benefit analyses for individual reactors under the alternative adopted. Whenever possible, Survey data were based on actual operating fuel cycle facilities in order to produce numerical values reflecting real or actual environmental impact. Where this was not possible, conservatism was utilized. As stated earlier, the Environmental Survey is not an impact statement, and therefore, a discussion of alternatives is not required. In addition, the Commission does not believe that the Survey is the appropriate place to discuss alternatives in view of the fact that alternatives are considered in the NEPA context in individual licensing actions on fuel cycle facilities. On the basis of the foregoing and consideration of the comments received, the record of the hearing and other factors involved, the Commission has adopted the amendment set forth below. The amendment is essentially identical to the second alternative contained in the November 15, 1972 FEDERAL REGISTER notice (37 FR 24191), except for minor clarifying and editorial changes.

Pursuant to the Atomic Energy Act of 1954, as amended, and sections 552 and 553 of Title 5 of the United States Code, the following amendment to Appendix D to 10 CFR Part 50 is published as a document subject to codification.

1. A new subsection 15 is added to section A to read as follows:

15. (a) In applicant's environmental reports and the Commission's detailed statements for light-water-cooled nuclear power reactors, the contribution of the environmental effects of uranium mining and milling, the production of uranium hexafluoride, isotopic enrichment, fuel fabrication, reprocessing of irradiated fuel, transportation of radioactive materials and management of low level wastes and high level wastes related to uranium fuel cycle activities to the environmental costs of licensing the nuclear power reactor, shall be as set forth in the following Table S-3 of the Commission's "Environmental Survey of the Uranium Fuel Cycle." No further discussion of such environmental effects shall be required.

(b) This section does not apply to any applicant's environmental report submitted pursuant to section 4 prior to June 6, 1974, or to any Final Environmental Statement for which a Draft Environmental Statement had

been circulated for comment prior to June 6, 1974.

Effective date. The foregoing amendment is effective on June 6, 1974.

(Sec. 161, Pub. L. 83-703, 68 Stat. 948; Sec. 102 Pub. Law 91-190, 83 Stat. 853; (42 U.S.C. 2201, 4332)).

Dated at Washington, D.C. this 16th day of April 1974.

For the Atomic Energy Commission.

PAUL C. BENDER,
Secretary of the Commission.

TABLE S-3.—Summary of environmental considerations for uranium fuel cycle
[Normalized to model LWR annual fuel requirement]

Natural resource use	Total	Maximum effect per annual fuel requirement of model 1,000 MWe LWR
Land (acres):		
Temporarily committed.....	63	
Undisturbed area.....	45	
Disturbed area.....	18	Equivalent to 90 MWe coal-fired powerplant.
Permanently committed.....	4.6	
Overburden moved (millions of MT)....	2.7	Equivalent to 90 MWe coal-fired powerplant.
Water (millions of gallons):		
Discharged to air.....	156	≈2 percent model 1,000 MWe LWR with cooling tower.
Discharged to water bodies.....	11,040	
Discharged to ground.....	123	
Total.....	11,319	<4 percent of model 1,000 MWe LWR with once-through cooling.
Fossil fuel:		
Electrical energy (thousands of MW-hour).....	317	<5 percent of model 1,000 MWe LWR output.
Equivalent coal (thousands of MT)....	115	Equivalent to the consumption of a 45 MWe coal-fired powerplant.
Natural gas (millions of scf).....	92	<0.2 percent of model 1,000 MWe energy output.
Effluents—chemical (MT):		
Gases (including entrainment):¹		
SO ₂	4,400	
NO _x ²	1,177	Equivalent to emissions from 45 MWe coal-fired plant for a year.
Hydrocarbons.....	13.5	
CO.....	28.7	
Particulates.....	1,156	
Other gases:		
F.....	.72	Principally from UF ₆ production enrichment and reprocessing. Concentration within range of state standards—below level that has effects on human health.
Liquids:		
SO ₂	10.3	From enrichment, fuel fabrication, and reprocessing steps.
NO _x	26.7	Components that constitute a potential for adverse environmental effect are present in dilute concentrations and receive additional dilution by receiving bodies of water to levels below permissible standards. The constituents that require dilution and the flow of dilution water are:
Fluoride.....	12.9	NH ₃ —600 cfs.
Ca ⁺⁺	5.4	NO _x —20 cfs.
Cl ⁻	8.6	Fluoride—70 cfs.
Na ⁺	16.9	From mills only—no significant effluents to environment.
NH ₃	11.5	
Fe ³⁺4	
Tailings solutions (thousands of MT)....	240	Principally from mills—no significant effluents to environment.
Solids.....	91,000	Principally from mills—no significant effluents to environment.
Effluents—Radiological (curies):		
Gases (including entrainment):		
Rn-222.....	75	Principally from mills—maximum annual dose rate <4 percent of average natural background within 5 mi of mill. Results in 0.06 man-rem per annual fuel requirement.
Ra-226.....	.02	
Th-230.....	.02	
Uranium.....	.032	
Tritium (thousand).....	16.7	Principally from fuel reprocessing plants—Whole body dose is 4.4 man-rem per annual fuel requirements for population within 50 mi radius. This is <0.005 percent of average natural background dose to this population.
Kr-85 (thousands).....	350	Release from Federal Waste Repository of 0.005 Ci/yr has been included in fission products and transuranics total.
I-129.....	.0024	
I-131.....	.024	
Fission products and transuranics.....	1.01	
Liquids:		
Uranium and daughters.....	2.1	Principally from milling—included in tailings liquor and returned to ground—no effluents; therefore, no effect on environment.
Ra-226.....	.0034	From UF ₆ production—concentration 5 percent of 10 CFR 20 for total processing of 27.5 ³ model LWR annual fuel requirements.
Th-230.....	.0015	From fuel fabrication plants—concentration 10 percent of 10 CFR 20 for total processing 26 annual fuel requirements for model LWR.
Th-234.....	.01	From reprocessing plants—maximum concentration 4 percent of 10 CFR 20 for total reprocessing of 26 annual fuel requirements for model LWR.
Rn-106.....	.15	
Tritium (thousands).....	2.5	
Solids (buried):		
Other than high level.....	661	All except 1 Ci comes from mills—Included in tailings returned to ground—no significant effluent to the environment, 1 Ci from conversion and fuel fabrication is buried.
Thermal (billions).....	3,360	<7 percent of model 1,000 MWe LWR.
Transportation (man-rem): Exposure of workers and general public.....	.334	

¹ Estimated effluents based upon combustion of equivalent coal for power generation.

² 1.2 percent from natural gas use and process.

³ Cs-137 (0.075 Ci/AFR) and Sr-90 (0.004 Ci/AFR) are also emitted.

[FR Doc.74-9076 Filed 4-19-74;8:45 am]

Title 12—Banks and Banking

CHAPTER I—BUREAU OF THE COMPTROLLER OF THE CURRENCY, DEPARTMENT OF THE TREASURY

PART 7—INTERPRETIVE RULINGS

Data Processing Services

In response to an invitation for comment published in the FEDERAL REGISTER, 37 FR 16556 (August 16, 1972), concerning whether or not the Comptroller's Interpretive Ruling (12 CFR 7.3500) dealing with the permissible data processing activities of national banks should be revised, the office received several hundred pages of documentary submissions.

Based upon these submissions and independent analysis, the Comptroller's Office determined to modify the ruling. A proposed revision of 12 CFR 7.3500 and an invitation for comment were subsequently published in the FEDERAL REGISTER on October 25, 1973 (38 FR 29479). After consideration of the comments received pursuant to the aforementioned notice as well as those received in response to the 1972 invitation for comment, and independent analysis, the Comptroller has determined to adopt, with only minor technical changes, the Interpretive Ruling proposed on October 25, 1973.

Interpretive Ruling 7.3500 has been revised because the comments received suggested almost unanimously that a revision of the ruling was necessary to provide greater clarity as to the Comptroller's views concerning the proper data processing activities of national banks. Moreover, the Comptroller's Office has concluded that the most commonly perceived focus of the former ruling—upon the persons or entities to whom data processing services could be provided—was neither in keeping with the initial intent of the ruling nor in accord with the office's present judgment that the more appropriate inquiry concerns the nature of the services which are provided. That is, a service which is inherent in the business of banking or incidental thereto, whether or not such service involves the use of data processing equipment or technology, may properly be offered by a national bank to any person or entity and not merely to other banks or to customers of the offering bank.

The specific provisions of the revised interpretation are discussed below, followed by an analysis of alternative proposals and the reasons for their rejection.

A national bank may use data processing equipment and technology to perform for itself and others all services expressly or incidentally authorized under the statutes applicable to national banks.

The revised ruling reflects the opinion of the Comptroller that, in general, data processing is a technology rather than a service distinct or different from the underlying services or functions to which the technology is applied. Thus, many services now commonly known as data processing services are not in fact

new services simply because computers now are used to perform them. The services usually predate the machinery, and the appropriateness of banks performing these services comes not from the fact that banks have computers, but from the fact that each service is of the sort which people and businesses long have looked to banks to perform. National banks, for example, always have processed checks, drafts, notes and related instruments used to effect financial transactions. They always have kept records for customers and performed bookkeeping operations. Payroll processing traditionally has been done for corporate or business depositors, and processing of accounts receivable and billing services frequently has been performed for bank customers. Thus, services now denominated data processing services are to a significant extent no more than traditional banking services performed with greater efficiency because of technological advances.¹

Additionally, many of these data processing services are intertwined with the payments process and transfer of funds which are the heart of the banking industry. Due to the growing importance of electronic funds transfers² and other necessary advances in banking, utilization and advancement of data processing technology is critically important to the banking industry as a whole.³ Many data processing services, such as the handling of accounts payable, are a natural outgrowth of the transfer of funds function, and a failure to permit the marketing of

¹ Other examples of traditional banking functions or services or evolutions thereof which now commonly are performed in whole or in part with automated data processing equipment are: correspondent banking services, credit union services, and savings and loan services; credit card services; demand deposit accounting, loan accounting, and savings accounting; general ledger, income and expense reporting, and financial statements preparation; freight payments; the processing of stock dividends; financial planning; and trust services. An exhaustive inventory of the types of "data processing" which bear an intrinsic or historical relationship to traditional banking activities is not attempted here, in part because the terminology used to describe such services is not uniform from bank to bank or data processor to data processor.

² It is widely recognized that a more efficient payments system is needed and that to support advances in the payments system banks must have adequate data processing capability, including skilled personnel and a lead in technology. The Monetary and Payments System Planning Committee's primary recommendation upon conclusion of its study of the payments system was that because of the increasing volume of checks and the need to find a more efficient means for the transfer of funds, banks must establish clearing and distribution systems for electronic payments, which systems would, in turn, require extensive data processing capability.

³ For example, as part of its banking business and incidental thereto, a national bank may collect, transcribe, process, analyze, and store, for itself and others, banking, financial, or related economic data.

such services would result in inefficiency and would deter the banking industry in its development of proper data processing facilities.

Accordingly, national banks may utilize data processing technology just as they may utilize any other technology to perform for themselves or others all services or functions which are expressly or incidentally authorized by the statutes applicable to national banks.

As previously mentioned, a national bank may perform with automated data processing technology or equipment any service or function which is either a part of the business of banking or incidental thereto, and may offer any such service or function as a "data processing service." In order to provide further, more specific guidance, the Comptroller's Office believes it advisable and helpful also to set forth its conclusion that any function or service which consists of collecting, transcribing, processing, analyzing, or storing banking, financial, or related economic data is either an inherent part of the business of banking (e.g., demand deposit accounting); or incidental thereto (e.g., billing services); or a combination of both (e.g., payroll processing). Other services or functions performed with data processing technology may, of course, also be permissible under the first sentence of the Interpretive Ruling.

In addition, incidental to its banking business, a national bank may . . .

While, as previously stated, most of the so-called "data processing services"

² The banking industry has a highly developed data processing capability—aside from government, banking is the largest single industry using data processing technology. Eight thousand banks have their own data processing systems or have data processing performed for them by other banks; 3,300 banks provide data processing services to their customers.

According to the American Bankers Association's 1972 "Bank Automation Survey," banks in all size categories use at least 52 percent (generally 60 percent) of their computer time for themselves; 0 to 13.1 percent for other banks; and 6.9 to 9.3 percent for nonbank customers (17 percent in the case of banks under \$10 million). The percentage of computer time sold is generally 5 percent, with the exception of small banks for which the percentage is generally 25 percent. Income from customer data processing services ranges from 1.6 percent to 3.2 percent of total bank income.

Data processing technology was developed by banks to process checks, then to perform other banking functions, and then to provide customer services. Data processing capability is now essential or important for the performance of most traditional banking applications such as demand deposit accounting, loan accounting, payroll, transit, trust services, and bank investments. Applications of computer technology can also provide loan information systems, financial information systems, bank planning models, and other methods for more detailed analysis of financial-economic data to improve the efficiency and reduce the costs of banks and their customers.

offered by banks are actually variations of, or otherwise intimately connected to, traditional banking services, the office also recognizes that there are certain products or services which are appropriately categorized as data processing products or services per se. Computer technology is bringing rapid changes both to the banking business and to business methods generally, thus making it difficult to define precisely what computer functions are a proper incident to the banking business. At this time the Comptroller is of the opinion that at least two such data processing products or services are clearly incidental to banking and permissible for national banks to offer.

* * * (1) market a by-product (e.g., program, output, etc.) of an above-described data processing activity; * * *

It is expected that, in the performance of permissible services or functions by means of automatic data processing, banks will develop certain by-products such as programs, which would, by themselves, be marketable products. It is the Comptroller's judgment that these by-products, which necessarily result from, or contribute to, the performance of permissible services properly may be marketed separately.

* * * and (ii) market excess time on its data processing equipment so long as the only involvement by the bank is furnishing the facility and necessary operating personnel.

The office recognizes that banks must have the data processing capacity (equipment and manpower) to handle peak volumes within narrow time limits and that, accordingly, the equipment and personnel may be underutilized at certain times. Banks, therefore, plausibly can argue that, in order to use efficiently their data processing equipment and personnel and increase the return on their investment in data processing technology, they lawfully may offer a variety of data processing and related services which may be beyond the limitations of this ruling. For the present, however, it is deemed advisable for national banks to limit their marketing of excess computer time to use of the equipment and the services of necessary operating personnel only.

The provision of data processing services by a national bank to others is subject to the prohibitions contained in 12 U.S.C. 1972 concerning tying arrangements, reciprocal dealing, and price discrimination. In particular, a national bank may not require any party who is or proposes to be a customer for any service or product of the bank to utilize any data processing service offered by the bank, and the bank may not fix or vary the consideration for any extension of credit, lease, or sale of property or provision of another service on the condition or requirement that a customer utilize a data processing service offered by the bank.

The comments received and the experience of this office do not substantiate

the contention that tie-ins⁴ or other abuses of economic power have occurred in banks' offering of data processing services.⁵ Nevertheless, the potential for abuse exists and detection of covert practices is difficult. Accordingly, national banks are specifically cautioned as to the applicability of 12 U.S.C. 1972 and related sections to the provision of data processing services.⁶ Moreover, through the examination process and random samplings of data processing contracts, the overall relationships between individual banks and their data processing customers will be examined in order to ensure compliance with statutory requirements, including compliance with 12 U.S.C. 1972. Additionally, any factually supported complaints will be promptly and thoroughly investigated by this office. The Comptroller believes, however, that competitive pressures and the sanctions provided by 12 U.S.C. 1971-1978 provide the strongest incentives for compliance.

⁴A tie-in occurs when the seller of one product requires the purchaser to take another product as a condition for obtaining the first product. Tie-ins normally are unlawful because they involve use of economic power in one market to restrain competition on the merits in another.

⁵The Association of Data Processing Service Organizations ("ADAPSO") and others assert that banks can demand concessions in return for loans or other financial necessities. ADAPSO argues that banks may do so by explicit statements or a borrower may simply buy bank services voluntarily in hope of getting credit. Especially in tight money periods, such practices, according to ADAPSO, are pervasive and not susceptible to individual antitrust suits. ADAPSO argues that coercion can be established by circumstantial evidence and such evidence is present in banking because it has a monopoly over financial transactions.

The American Bankers Association ("ABA") and many banks argued on the other hand that the banking industry and the data processing industry are intensely competitive. Besides banks and service bureaus, other competitors in the data processing business include public accounting firms and computer manufacturers. The banking industry, with about 13,800 banks—large, medium, and small—is, according to these commentators, intensely competitive with regard to deposits, loans and other banking business, especially in the larger metropolitan areas and for regional and nationwide business. Even in small communities customers can commute to different banks, bank by mail, or use nationwide credit card systems. And commercial banks encounter intense competition from nonbanking sources for all banking services except demand deposits. Therefore, banks do not hold "governmental monopoly grants," and banking as an industry is not comparable to the communications industry or to holders of patents. Thus, it is maintained that—since banking and the entire financial industry are extremely competitive—banks do not have the economic power to force tie-ins. Loans are based on the capacity to pay and, if a loan is worth making, there is always more than one financial institution which will make it.

⁶In addition to 12 U.S.C. 1971-1978, other safeguards against unfair competitive practices are provided by the antitrust laws and other existing laws and regulations, as well as increased customer awareness of rights and remedies.

GENERAL REMARKS

Numerous proposals, both for a new interpretation as a whole and for specific sections of an interpretation, were received in response to the first solicitation of comments. The Comptroller's Office disagrees with proposed interpretations that national banks are permitted, with or without quantitative limitations, to offer all types of data processing services or process all types of information.⁷ The Comptroller believes, as stated above, that data processing (i.e., the automated processing of data via computers) is a technology, analogous to the use of adding machines or typewriters, and that it is the data involved, and not the technology used, which should be the primary focus in determining what services are inherent or incidental to banking. Therefore, a qualitative, rather than a quantitative, limitation seems an appropriate and necessary part of the Comptroller's interpretive ruling.

Thus, the processing of data which is not of a banking, financial, or related economic nature, or which does not concern or bear a reasonable relationship to a function or service otherwise proper

⁷In favor of unlimited data processing services, some comments argued that:

(1) Data processing has extended and integrated simple services so that the line between financially-related and nonfinancially-related data is difficult to establish. It is, therefore, virtually impossible to compartmentalize types of data processing services into permissible and impermissible services for banks to perform. In addition, restrictions on the nature of permissible services would restrict the ability of banks to play an efficient role in the payments system and would impose artificial barriers on the development of an integrated payments system.

On the negative side, it is argued that the payments system is not a sufficient rationale for bank performance of all data processing business. Nearly all aspects of business involve the transfer of funds, and banks are no more justified in engaging in a general data processing business on this basis than they would be justified in engaging in any other business.

The Comptroller believes that data processing, as a bank operating function and as an industry, is in an evolutionary state. Accordingly, the interpretive ruling attempts to preserve an innovative environment for banks using this technology. There is a recognized difficulty and loss of economy and convenience in compartmentalizing data processing services into what are or are not proper for banks to perform. However, the Comptroller is not persuaded at present that this problem justifies the processing of data by banks beyond the scope permissible under this ruling.

(2) The data processing capability required to support advances in the payments system will require that banks have freedom to innovate and offer a broad range of services. The magnitude and scope of activities permitted must be large enough to justify the best equipment and skills.

On the negative side it is argued that the capability rationale is equally invalid because equipment and personnel can be matched to the needs of a particular bank.

The Comptroller believes that the range of activities permissible under this ruling is sufficiently broad to permit development of adequate data processing capability for individual banks and the banking system as a whole.

for banks, should not be undertaken by national banks without limitation, simply because technology makes it economically feasible or advantageous to do. The Comptroller deems it neither appropriate nor permissible for a bank to engage in a general data processing business.

The Comptroller also has rejected suggestions that the interpretive ruling express the general opinion that, incidental to its banking business, a national bank may offer any data processing service upon request of a customer if such data processing service is not otherwise reasonably available in the market area involved. This activity is permissible for bank holding companies and their non-bank subsidiaries under a regulation and interpretation¹² issued by the Board of Governors of the Federal Reserve System.

The legal standard under which the Board determines whether or not an activity is permissible for bank holding companies and their nonbank subsidiaries is somewhat different from the standard which this office considers in formulating an opinion as to whether an activity is permissible for national banks, and includes a test of " * * * benefits to the public * * *". Accordingly, an activity permissible for a holding company is not necessarily always permissible for a national bank.

In some instances, banks may be the only source of data processing services (e.g., banks located in smaller communities far from large urban areas); the only source of certain data processing services (correspondent banking, foreign exchange, etc.); or the only source of competition for the existing provider of data processing services in an area. The comments received, however, have failed to disclose any evidence of specific cases where either a national bank was the sole source for performance of a nonpermissible data processing service needed by a customer, or the revenue derived from the performance of such a service was essential to support the data processing capability required by the bank for its internal needs. If such evidence is presented in the future, then the office's opinion may be revised accordingly.

On the other hand, the Comptroller has rejected the thesis that banks may not offer any data processing services to the public. ADAPSO and others proposed this thesis on the grounds that (1) there is no legal authority for bank provision of data processing services¹³

¹² 12 CFR 225.4(a)(8)(i) and 12 CFR 225.123(g).

¹³ 12 U.S.C. 1843(c)(8).

¹⁴ ADAPSO argued that:

(1) The marketing of data processing services by national banks is not permitted by the incidental powers clause since the specific provisions in the incidental powers clause do not include data processing services in their ambit.

This argument, however, misstates the issue by focusing upon the technology as opposed to the service or product to which it is applied.

(2) The Bank Service Corporation Act of 1962 (12 U.S.C. 1861, et seq.) bars bank service corporations from marketing data processing

and/or (2) bank provision of data processing services should in any event be prohibited because the competition offered by banks is harmful¹⁵ and/or unfair¹⁶ to data processing service bureaus. The Comptroller's Office has concluded, on the contrary, that:

essing services to customers other than banks. If bank service corporations cannot provide data processing equipment or services to nonbank customers, ADAPSO argues, neither can banks themselves.

This argument is equally unpersuasive. It is clear from the language of the Bank Service Corporation Act and from its legislative history that the customer and marketing restrictions imposed upon bank service corporations are not applicable to banks themselves.

¹⁵ ADAPSO contends that since data processing service bureaus must themselves be bank customers, they are vulnerable to intimidation by banks which causes them to be less competitive with banks for data processing business. Moreover, ADAPSO and others contend that bank competition has been very harmful to data processing service bureaus and has resulted in a substantial loss of business.

The ABA argued in turn that bank competition cannot be a serious problem for service bureaus because a recent ADAPSO survey shows that less than 8 percent of all data processing firms surveyed said that competition was the reason for their loss of customers. In responding to a question regarding the intensity of competition from different industries, banking was listed third. Only 13 percent of the data processing firms stated that the banking industry is a competitive concern (although competition was ranked as the most serious problem)—computer manufacturers are a more significant competitive concern than are banks.

Moreover, the data processing industry is not doing badly according to the ADAPSO survey. Between 1968 and 1970, it grew from 1,300 to 1,700 firms and average revenues grew from \$800,000 per year to \$1,600,000 per year. Improvements in profits were reported by 76 percent of the firms surveyed and a majority of the firms reported a net gain in customers. (It should also be noted, however, that the survey cited by the ABA indicates that 63 percent of all data processing firms have total revenues under \$600,000; the majority of firms are generally three to six years old; and 42 percent of the firms believe that competition is intense.)

Comments received from banks make clear that, as would be expected, banks enjoy some advantage in offering financially related data processing services, particularly those related to the payments mechanism and to bank deposit and loan functions. Even in these areas, however, banks now meet vigorous competition. For example, many settlement systems such as the NYSE Central Certificate Service for payment of dividends, are developing independently of banking. Additionally, service bureaus are offering services in payment areas, including such services as credit card authorization and retail sales information.

The existence of this competition and the generally healthy growth of service bureaus renders doubtful ADAPSO's contention that its members are intimidated from competing.

¹⁶ The three major practices cited as unfair by competitors of banks are:

(1) Low cost or free data processing services in exchange for compensating balances.

The ABA, however, states that this is a traditional banking practice. The customer

(1) Banks traditionally have offered to the public most of the services now performed with data processing technology, and these services are part of the banking business. See footnote 1, supra, and accompanying text. The fact that automated data processing technology has made these services economical and profitable, hence more readily marketable, does not make the offering of those services unlawful; and

(2) The alleged competitive injury was stated in generalities, unsupported by

knows he is foregoing interest or other income for compensating balances and he can calculate the costs/benefits and decide accordingly.

Comments from the banking industry also suggest that the practice of free or low cost data processing services in exchange for compensating balances is not the norm. According to the latest available survey, of 1,212 banks, 57 percent charged fees alone; 37 percent charged a combination of fees and compensating balances; and 6 percent charged compensating balances only. Data processing services offered by the majority of banks are offered on a fee basis so that customers can compare the prices and services of different banks and others. Moreover, many customers insist on paying a fee rather than a fee/compensating balance arrangement. And, the banks argue, data processing is not a giveaway for banks—they charge reasonable prices.

It should be noted that the offering of free or low cost data processing services in exchange for compensating balances would have been among the practices prohibited by the original version of Section 106 of the Bank Holding Company Act Amendments of 1970 (now 12 U.S.C. 1972). However, that version was amended by Congress in part specifically to exempt the traditional practice whereby compensating balances are used to reduce or offset the charges for other bank services. See, 116 Cong. Rec. 31817-8, 31822-3 (1970); S. Rep. No. 91-1084, 91st Cong., 2d Sess., pp. 16-17, 30-31, 44-46 (1970); 116 Cong. Rec. 32125-33 (1970).

Depending upon the circumstances, however, this practice may otherwise be actionable under the antitrust laws, in particular, section 1 of the Sherman Act. In any event the manner in which a bank is compensated for a service does not affect the bank's lawful power to offer that service as a part of or incident to its banking business.

(2) Banks provide data processing services whereas data processing companies cannot provide banking services.

While this statement is correct, it does not follow that this is an unfair practice, particularly since banks are limited in the types of data processing services which they are authorized to provide while data processing companies have no such limitations. Moreover, other businesses, such as savings and loans, credit unions, small loan companies, credit card plans, etc., are able to compete with banks even though they are not able to offer all services which banks can offer.

(3) Pricing of data processing services based upon "incremental cost" or "marginal cost" rather than "full cost" (i.e., the bank may not prorate its overhead, cost of the equipment and salaries of personnel in determining the fee to be charged) is unfair.

The ABA answers in rebuttal that price advantages due to economies of scale should be passed on to bank customers.

specific evidence that bank competition in the offering of data processing services was harmful to data processing service bureaus or was characterized by unfair competitive practices.

Additionally, the office did not concur with proposed interpretations which would suggest that banks may offer data processing services only to other banks or only to the extent to which the bank has excess capacity following performance of services for itself. This is because, in the Comptroller's opinion, customer restrictions are anti-competitive in nature and no sound legal or practical reason is apparent for restricting the performance of otherwise permissible services to the extent to which the bank has excess capacity.

The use of automatic data processing technology is an accepted fact for the majority of American industries, including banking. It is of particularly critical importance to the banking industry in view of the need for improvement in the payments mechanism. If banks are to continue to serve effectively in the transfer of funds, they must have the capacity to make use of, and develop further innovations in, electronic funds transfers. Accordingly, it is in the best interest of the banking system as a whole and the public, for national banks to develop adequate data processing capability. Further, the Comptroller believes it to be clearly in the public interest for banks to offer permissible automatic data processing services to the public. Bank provision of such data processing services should offer customers convenience; speedy and accurate handling of data; a financially stable, regulated provider of services; traditional bank security and confidentiality; the benefits of bank expertise in financial recordkeeping; and the cost and service benefits which result from competition. Neither the comments of ADAPSO nor any other comments submitted to the office have suggested any persuasive reason why data processing service bureaus should be insulated from the normal competitive forces faced by most businesses, or why users of data processing services should be deprived of the benefits normally flowing from such competition. At the same time, the Comptroller believes that the provisions of 12 U.S.C. 1971-1978 and other antitrust restrictions will protect customers from overzealous marketing, and that the broad range of data processing services, a number of which are not permissible for banks, will assure ample sources of business for data processing service bureaus.

Dated: April 15, 1974.

[SEAL]

JAMES E. SMITH,
Comptroller of the Currency.

Part 7, of 12 CFR Chapter I, is amended by revising § 7.3500 to read as follows:

§ 7.3500 Use of data processing equipment and furnishing of data processing services.

(a) A national bank may use data processing equipment and technology to

perform for itself and others all services expressly or incidentally authorized under the statutes applicable to national banks. For example, as part of its banking business and incidental thereto, a national bank may collect, transcribe, process, analyze, and store, for itself and others, banking, financial, or related economic data. In addition, incidental to its banking business, a national bank may (1) market a by-product (e.g., program, output, etc.) of an above-described data processing activity; and (2) market excess time on its data processing equipment so long as the only involvement by the bank is furnishing the facility and necessary operating personnel.

(b) The provision of data processing services by a national bank to others is subject to the prohibitions contained in 12 U.S.C. 1972 concerning tying arrangements, reciprocal dealing, and price discrimination. In particular, a national bank may not require any party who is or proposes to be a customer for any service or product of the bank to utilize any data processing service offered by the bank, and the bank may not fix or vary the consideration for any extension of credit, lease, or sale of property or provision of another service on the condition or requirement that a customer utilize a data processing service offered by the bank.

(R.S. 324, et seq., as amended; 12 U.S.C. 1, 24, et seq.)

[FR Doc.74-9121 Filed 4-19-74;8:45 am]

Title 14—Aeronautics and Space

CHAPTER I—FEDERAL AVIATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Airspace Docket No. 74-SW-16]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

Alteration of Control Zone

The purpose of this amendment to Part 71 of the Federal Aviation Regulations is to change the name of the Waco Municipal Airport to Waco-Madison Cooper Airport.

Since this amendment will impose no undue burden on any person, notice and public procedure hereon are unnecessary and it may be made effective upon publication in the FEDERAL REGISTER (April 22, 1974) as hereinafter set forth.

In § 71.171 (39 FR 354), the following control zone amendment is added:

WACO, TEX.

That airspace within a 5-mile radius of Waco-Madison Cooper Airport (latitude 31° 36'40" N., longitude 97° 13'40" W.); within 2 miles each side of the Waco VORTAC 330° radial extending from the 5-mile radius zone to 8 miles northwest of the VORTAC; within 2 miles each side of the Waco ILS localizer north course extending from the 5-mile radius zone to the OM and within a 5-mile radius of James Connally Airport (latitude 31° 38'00" N., longitude 97° 04'00" W.).

(Sec. 307(a), Federal Aviation Act of 1958 (49 U.S.C. 1348); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)))

Issued in Fort Worth, Tex., on April 12, 1974.

ALBERT H. THURBURN,
Acting Director,
Southwest Region.

[FR Doc.74-9073 Filed 4-19-74;8:45 am]

[Airspace Docket No. 74-SW-6]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

Designation of Transition Area

The purpose of this amendment to Part 71 of the Federal Aviation Regulations is to designate the Thibodaux, La., transition area.

On March 5, 1974, a notice of proposed rule making was published in the FEDERAL REGISTER (39 FR 8350) stating the Federal Aviation Administration proposed to designate a transition area at Thibodaux, La.

Interested persons were afforded an opportunity to participate in the rule making through submission of comments. All comments received were favorable.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective 0901 G.m.t., June 20, 1974, as hereinafter set forth.

In § 71.181 (39 FR 440), the following transition area is added:

THIBODAUX, LA.

That airspace extending upward from 700 feet above the surface within a 5-mile radius of the Thibodaux Municipal Airport (latitude 29° 44'50" N., longitude 90° 49'55" W.) and within 2 miles each side of the Tibby, La., VORTAC 359°T radial extending from the 5-mile radius to the Tibby VORTAC excluding the portion that overlaps the Houma, La., transition area.

(Sec. 307(a), Federal Aviation Act of 1958 (49 U.S.C. 1348); Sec. 6(c), Department of Transportation Act [49 U.S.C. 1655(c)].)

Issued in Fort Worth, Tex., on April 12, 1974.

ALBERT H. THURBURN,
Acting Director,
Southwest Region.

[FR Doc.74-9072 Filed 4-19-74;8:45 am]

Title 22—Foreign Relations

CHAPTER I—DEPARTMENT OF STATE

[Departmental Regulation 108.698]

PART 6—FREEDOM OF INFORMATION POLICY AND PROCEDURES

Miscellaneous Amendments

Part 6 of Title 22 of the Code of Federal Regulations is amended to add Executive Order 11652 (37 FR 5209, March 10, 1972) which superseded Executive Order 10501; to reflect a change in titles of officials now designated to handle requests or release of records; and to make certain changes in the schedule of fees and method of payment for services rendered.

1. In § 6.4, paragraph (a) is amended to read as follows:

§ 6.4 Records which may be exempt from disclosure.

(a) Records required to be withheld by Executive order or other authority, relating to national defense or foreign policy. Included in this category are records required by Executive Order 11652 to be kept secret in the interests of national defense or foreign policy. Disclosure of records in this category will be made to the public only in the manner established by § 6.9.

2. Section 6.5 is amended to read as follows:

§ 6.5 Authority to release and certify; authority to withhold records and appeals.

(a) Except as provided in § 6.9, authority is hereby delegated to the Assistant Secretary of State for Public Affairs to furnish copies of records to any person entitled thereto, pursuant to these regulations, and upon request to provide certified copies thereof in accordance with Part 131 of this chapter.

(b) If an office of the Department of State believes that a record which has been requested under this part should not be disclosed, it shall refer the request, with a copy of the record in question, to the Assistant Legal Adviser for Management and Consular Affairs. The Assistant Legal Adviser for Management and Consular Affairs, in consultation with the Freedom of Information Staff, Bureau of Public Affairs, shall determine whether the record may be exempted from disclosure and whether, if so, it should nevertheless be disclosed. This determination shall be in written form, clearly stating the basis upon which the record has been withheld, including the specific provision governing exemption under 5 U.S.C. 552(b) which has been determined to apply. That determination shall be final, subject only to review as provided in paragraph (c) of this section.

(c) Review of the determination under paragraph (b) of this section may be requested by the person who submitted the original request for a record which has been withheld. The review must be requested in writing within 30 days of the notice advising that person of the determination to withhold. The request for review should be forwarded by certified mail to the Assistant Secretary of State for Public Affairs, Chairman, Council on Classification Policy, Department of State, Washington, D.C. 20520, together with a copy of the written denial issued under paragraph (b) of this section. The request shall include a statement of the circumstances, reasons, or arguments advanced for insistence upon disclosure of the originally requested

record. After review, the decision will be promptly communicated to the person requesting review, and will constitute the final action of the Department.

3. Section 6.6 is amended to read as follows:

§ 6.6 Public reading room.

A public reading room or area where the records described in § 6.3 shall be made available is located in the Department of State, 2201 C Street NW., Washington, D.C. 20520. The receptionist will refer the applicant to the proper room. Fees will not be charged for access by the public to this room or the records contained there, but fees in accordance with § 6.8 will be charged for furnishing copies thereof. The Assistant Secretary of State for Public Affairs, in his or her discretion, may authorize persons to utilize their own portable copying equipment. Any arrangements for the use of such equipment must be consistent with security regulations of the Department of State and are subject to the availability of personnel to monitor such copying.

4. In section 6.7, paragraphs (a) and (e) are amended to read as follows:

§ 6.7 Manner of requesting records.

(a) Identifiable records may be requested by the public in person from 10 a.m. to 4 p.m., Department of State, 2201 C Street NW., Washington, D.C., where the receptionist will refer the applicant to the proper office for service and the necessary forms for making a request. Requests by mail should be addressed to the Assistant Secretary of State for Public Affairs, Department of State, Washington, D.C. 20520.

(e) The burden of adequately identifying the record so requested lies with the requesting person. Such person may seek appropriate assistance from the Assistant Secretary of State for Public Affairs, or a member of his or her staff, in identifying the record sought.

5. In § 6.8, the amount of fees for services is changed in paragraph (a) (1), (2), (3), (4), and (5), and a new paragraph (a) (8) is added. Paragraphs (c) and (f) are also revised and a new paragraph (h) is added. As amended, § 6.8 reads as follows:

§ 6.8 Schedule of fees and method of payment for services rendered.

(a) * * *	
(1) Searching for records, per hour or fraction thereof	\$5.00
(2) Other facilitative services and index assistance — minimum charge, per hour or fraction thereof	5.00

(3) Copies made by photostat or otherwise (per page)	.10
(4) Certification of each record as a true copy	1.00
(5) Certification of each record as a true copy, under seal of Department	1.50

(8) Duplication of architectural photographs and drawings	2.00
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(c) When no specific fee has been established for a service, or the request for a service does not fall under one of the above categories due to the amount or size or type thereof, the Assistant Secretary of State for Public Affairs is authorized to establish an appropriate fee, pursuant to the criteria established in Bureau of the Budget Circular No. A-25, entitled "User Charges."

(f) Remittances shall be in the form either of a personal check or bank draft drawn on a bank in the United States, a postal money order, or cash. Remittances shall be made payable to the order of the Treasurer of the United States and mailed to the Assistant Secretary of State for Public Affairs, Department of State, Washington, D.C. 20520, Attention: Freedom of Information Staff. The Department will assume no responsibility for cash which is lost in the mail.

(h) Notwithstanding the foregoing, materials may be furnished without charge to foreign governments, other governmental agencies or units, non-profit educational organizations or any other applicants whenever the Assistant Secretary of State for Public Affairs determines that such action would further the performance of the functions of the Department of State.

(Sec. 4, Act of May 26, 1949, 63 Stat. 111, as amended, (22 U.S.C. 2658; 5 U.S.C. 552))

Since these amendments relate to Departmental organization, procedure, and practices, notice and public procedure thereon are unnecessary and it may be made effective in less than 30 days after publication in the FEDERAL REGISTER. In addition, any increases in fees are minor and are offset by the elimination of charges for review from search costs.

Effective date. These amendments are effective April 22, 1974.

For the Secretary of State.

Dated: March 13, 1974.

L. DEAN BROWN,
Deputy Under Secretary
for Management.

[FR Doc.74-9082 Filed 4-19-74;8:45 am]

Title 24—Housing and Urban Development
 CHAPTER X—FEDERAL INSURANCE ADMINISTRATION, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
 SUBCHAPTER B—NATIONAL FLOOD INSURANCE PROGRAM

[Docket No. FI 249]

PART 1914—AREAS ELIGIBLE FOR THE SALE OF INSURANCE

Status of Participating Communities

Section 1914.4 of 24 CFR Part 1914 is amended by adding in alphabetical sequence a new entry to the table. In this entry, a complete chronology of effective dates appears for each listed community. Each date appearing in the last column of the table is followed by a designation which indicates whether the date signifies the effective date of the authorization of the sale of flood insurance in the area under the emergency or the regular flood insurance program. The entry reads as follows:

§ 1914.4 Status of participating communities.

State	County	Location	Map No.	State map repository	Local map repository	Effective date of authorization of sale of flood insurance for area
Florida	Broward	Coconut Creek, city of				Apr. 17, 1974. Emergency.
Georgia	Bartow	Cartersville, city of				Do.
Louisiana	Natchitoches	Natchitoches, city of				Do.
Michigan	Oakland	Hazel Park, city of				Do.
Do.	Huron	Port Austin, township of				Do.
Minnesota	Nicollet	Unincorporated areas				Do.
Do.	Olmstead	do				Do.
New York	Cayuga	Aurelius, town of				Do.
Ohio	Franklin	Valley view, village of				Do.
Nebraska	Saline	Crete, city of				Do.
Vermont	Rutland	Proctor, city of				Do.
Wisconsin	Milwaukee	West Allis, city of				Do.
Do.	Price	Park Falls, city of				Do.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968), effective Jan. 28, 1969 (33 FR 17804, Nov. 23, 1968), as amended (secs. 408-410, Pub. L. 91-152, Dec. 24, 1969), 42 U.S.C. 4001-4127; and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, Feb. 27, 1969)

Issued: April 11, 1974.

GEORGE K. BERNSTEIN,
 Federal Insurance Administrator.

[FR Doc.74-9066 Filed 4-19-74;8:45 am]

RULES AND REGULATIONS

[Docket No. FI-248]

PART 1914—AREAS ELIGIBLE FOR THE SALE OF INSURANCE
Status of Participating Communities

Section 1914.4 of 24 CFR Part 1914 is amended by adding in alphabetical sequence a new entry to the table. In this entry, a complete chronology of effective dates appears for each listed community. Each date appearing in the last column of the table is followed by a designation which indicates whether the date signifies the effective date of the authorization of the sale of flood insurance in the area under the emergency or the regular flood insurance program. The entry reads as follows:

§ 1914.4 Status of participating communities.

State	County	Location	Map No.	State map repository	Local map repository	Effective date of authorization of sale of flood insurance for area
Georgia	Whitfield	Unincorporated areas.				Apr. 18, 1974. Emergency.
Missouri	Lincoln	Winfield, city of				Do.
Oklahoma	Cleveland	Moore, city of				Do.
Oregon	Benton	Unincorporated areas.				Do.
Pennsylvania	Lehigh	Macungie, borough of				Do.
Tennessee	Madison	Jackson, city of				Do.
Wisconsin	Ozaukee	Saukville, village of				Do.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968), effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended (secs. 408-410, Pub. L. 91-162, Dec. 24, 1969), 42 U.S.C. 4001-4127; and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, Feb. 27, 1969)

Issued: April 11, 1974.

GEORGE K. BERNSTEIN,
Federal Insurance Administrator.

[FR Doc. 74-9067 Filed 4-19-74; 8:45 am]

[Docket No. FI 247]

PART 1914—AREAS ELIGIBLE FOR THE SALE OF INSURANCE

Status of Participating Communities

Section 1914.4 of 24 CFR Part 1914 is amended by adding in alphabetical sequence a new entry to the table. In this entry, a complete chronology of effective dates appears for each listed community. Each date appearing in the last column of the table is followed by a designation which indicates whether the date signifies the effective date of the authorization of the sale of flood insurance in the area under the emergency or the regular flood insurance program. The entry reads as follows:

§ 1914.4 Status of participating communities.

State	County	Location	Map No.	State map repository	Local map repository	Effective date of authorization of sale of flood insurance for areal
Illinois	Cook	Forest Park, village of				Apr. 16, 1974.
Michigan	Clinton	Watertown Charter township				Apr. 16, 1974. Emergency.
Minnesota	Douglas	Unincorporated areas				Do.
Do.	Freeborn	do.				Do.
Do.	Fillmore	Chatfield, city of				Do.
Do.	Hennepin	Mound, city of				Do.
Do.	Otter Tail	Pelican Rapids, city of				Do.
Do.	Stearns	Sauk Centre, city of				Do.
Do.	Todd	Browerville, city of				Do.
Do.	do.	Long Prairie, city of				Do.
Do.	Wadena	Wadena, city of				Do.
New York	Washington	Fort Edward, town of				Do.
North Carolina	Halifax	Weldon, town of				Do.
Pennsylvania	Carbon	Nesquehoning, borough of				Do.
Do.	Erie	Union City, borough of				Do.
South Carolina	Pickens	Liberty, town of				Do.
South Dakota	Brookings	Brookings, city of				Do.
Tennessee	Claiborne	Unincorporated areas				Do.
Texas	Dallas	Duncanville, city of				Do.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968), effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended (secs. 408-410, Pub. L. 91-152, Dec. 24, 1969), 42 U.S.C. 4001-4127; and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, Feb. 27, 1969)

Issued: April 9, 1974.

CHARLES W. WIECKING,
Acting Federal Insurance Administrator.

[FR Doc.74-9068 Filed 4-19-74;8:45 am]

RULES AND REGULATIONS

Title 25—Indians

CHAPTER I—BUREAU OF INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR
PART 221—OPERATION AND MAINTENANCE CHARGES

Colorado River Indian Irrigation Project,
Arizona

On page 9982 of the FEDERAL REGISTER of March 15, 1974, there was published a notice of intention to modify §§ 221.6 and 221.7 of Title 25, Code of Federal Regulations, dealing with operation and maintenance assessments and excess water charges on the Colorado River Indian Irrigation Project, Arizona.

Interested persons were given 30 days within which to submit written comments, suggestions, or objections with respect to the proposed amendments. No comments, suggestions, nor objections were received, and the proposed revisions are hereby adopted without change, as set forth below.

The revised sections will read as follows:

§ 221.6 Charges.

Pursuant to the provisions of the Acts of Congress approved August 1, 1914, and March 7, 1928 (38 Stat. 583, 45 Stat. 210; 25 U.S.C. 385-387), the annual basic charge against the land to which water can be delivered under the Colorado River Indian Irrigation Project in Arizona, for the operation and maintenance of that project, is hereby fixed at \$14 per irrigable acre, whether water is used or not. Payment of this charge will entitle the water user to, but not in excess of, 8 acre-feet of water per acre per annum on certain sandy areas as described in a schedule on file at the Colorado River Indian Agency, and available for inspection by interested parties, and to 5 acre-feet of water per annum per irrigable acre on all other lands. With the approval of the Superintendent, additional water, reasonably sufficient to carry away alkali salts, may be allowed on certain alkali tracts at no additional charge for the purpose of reclaiming lands by the usual methods, such as flooding and leaching. The foregoing charges and allotments of water shall become effective for the calendar year 1975 and continue in effect thereafter, until further notice.

§ 221.7 Excess water charge.

Additional water, if and when available, in excess of basic allowances, may be delivered upon written request to the Superintendent by landowners or users at the rate of \$3.50 per acre-foot, or fraction thereof.

JOHN ARTICHOKER,
Area Director.

[FR Doc. 74-9081 Filed 4-19-74; 8:45 am]

Title 26—Internal Revenue

CHAPTER I—INTERNAL REVENUE SERVICE, DEPARTMENT OF THE TREASURY

SUBCHAPTER E—ALCOHOL, TOBACCO AND OTHER EXCISE TAXES

[T.D. ATF-11]

PART 212—FORMULAS FOR DENATURED ALCOHOL AND RUM

Specially Denatured Alcohol Formula
Number 23-A

The following amendment of Specially Denatured Alcohol Formula Number 23-A is necessitated by a nationwide shortage of denaturants. The specific effect of the amendment will be to reduce the amount of denaturant (acetone) in this formula by 20 percent. Specially denatured alcohol is alcohol that is intended for industrial, rather than beverage, use and that has been rendered unfit for beverage use by the addition of non-potable chemicals termed denaturants. Because specially denatured alcohol is not subject to the tax imposed on beverage alcohol, denaturants are necessary to prevent the alcohol from being diverted illegally to beverage use. Bureau chemists have determined that the proposed denaturant level reduction in Formula 23-A will not result in a greater risk of diversion to beverage use; consequently, the revenue will not be jeopardized.

In consideration of the foregoing, paragraph (a) of 26 CFR 212.30 is amended to reduce the denaturant level of Formula 23-A by 20 percent. As amended, § 212.30(a) reads as follows:

§ 212.30 Formula No. 23-A.

(a) *Formula.* To every 100 gallons of alcohol add:

Eight gallons of acetone, N.F.

Because this Treasury decision is liberalizing in nature and should become effective as soon as possible due to the shortage of denaturants, it is found that it would be contrary to the public interest to issue this Treasury decision with notice and public procedure thereon under 5 U.S.C. 553(b) or subject to the effective date limitation of 5 U.S.C. 553(d). Accordingly, this Treasury decision shall become effective April 22, 1974.

(This Treasury decision is issued under the authority contained in 26 U.S.C. 7805 (68A Stat. 917)).

[SEAL] REX D. DAVIS,
Director, Bureau of
Alcohol, Tobacco and Firearms.

Approved: April 11, 1974.

JAMES B. CLAWSON,
Acting Assistant Secretary
of the Treasury.

[FR Doc. 74-9079 Filed 4-19-74; 8:45 am]

Title 33—Navigation and Navigable Waters

CHAPTER I—COAST GUARD,
DEPARTMENT OF TRANSPORTATION

[CGD-72-211R]

PART 117—DRAWBRIDGE OPERATION
REGULATIONS

Barnegat Bay, N.J.

This amendment changes the regulations for the Route 37 bridge across Barnegat Bay to allow the draw to open on the hour and half hour from 10 a.m. to 2 p.m. on weekends and holidays from Memorial Day through Labor Day. The draw shall open on signal at all other times. This amendment was circulated as a public notice dated November 8, 1972 by the Commander, Third Coast Guard District and was published in the FEDERAL REGISTER as a notice of proposed rule-making (CGD-72-211P) on October 31, 1972 (37 FR 23191). Twenty-six replies were received, of which 8 supported the proposal, 2 had no comment and 16 opposed its adoption, mainly because of what was felt as a lack of maneuvering room for vessels waiting for draw openings. The Coast Guard recognizes that limited maneuvering space is available, however, it is felt that the amount available provide; for the minimum needs. This case will be closely monitored by the Commander, Third Coast Guard District, and if revisions are needed, he will recommend the changes he feels are desirable.

Accordingly, 33 CFR Part 117 is amended by adding paragraph (p) to § 117.220 to read as follows:

§ 117.220 New Jersey Intra-coastal Waterway and tributaries; bridges.

(p) Barnegat Bay, New Jersey Route 37 highway bridge between Bay Shore and Seaside Heights. The draw shall open on signal except that from Memorial Day through Labor Day from 10:00 a.m. to 2:00 p.m. on Saturdays, Sundays, and holidays, the draw need open only on the hour and half hour. However, the draw shall open at any time for the passage of vessels with tows.

(Sec. 5, 28 Stat. 362, as amended; sec. 6 (g) (2), 80 Stat. 937; 33 U.S.C. 499; 49 U.S.C. 1655 (g) (2)); 49 CFR 1.46 (c) (5); 33 CFR 1.05-1 (c) (4))

Effective date. This revision shall become effective on May 20, 1974.

Dated: April 15, 1974.

R. I. PRICE,
Captain, U.S. Coast Guard,
Deputy Chief, Office of Marine Environment and Systems, by direction of the Commandant.

[FR Doc. 74-9132 Filed 4-19-74; 8:45 am]

[CGD 73-198R]

PART 117—DRAWBRIDGE OPERATION REGULATIONS

Ashepoo River, S.C.

This amendment changes the regulations for the Seaboard Coast Line railroad bridge across the Ashepoo River, mile 32.0 to permit the draw to remain closed to the passage of vessels. However, the draw would be required to be returned to operational condition within 6 months after notification by the Commandant to take such action. This amendment was circulated as a public notice dated September 21, 1973 by the Commander, Seventh Coast Guard District, and was published in the FEDERAL REGISTER as a proposed rulemaking (CGD 73-198P) on September 11, 1973 (38 FR 24913). Two replies were received which objected to the proposed change. One respondent later changed and recommended approval. The other response objected to the change on the basis of future navigational needs. The Coast Guard feels that the 6 month proviso provides for the reasonable needs of navigation.

Accordingly, 33 CFR Part 117 is amended by adding paragraph (h) (4) to § 117.245 to read as follows:

§ 117.245 Navigable waters discharging into the Atlantic Ocean south of and including Chesapeake Bay and into the Gulf of Mexico, except the Mississippi River and its tributaries and outlets; bridges where constant attendance of draw tenders is not required.

(h) * * *

(4) Ashepoo River, S.C.; Seaboard Coast Line drawbridge, mile 32.0. The draw need not open for the passage of vessels and paragraphs (b) through (e) of this section shall not apply to the bridge. However, the draw shall be returned to full operation within 6 months after notification to the owner by the Commandant to take such action if there is a change in navigational requirements.

(Sec. 5, 28 Stat. 362, as amended; sec. 6(g) (2), 80 Stat. 937; (33 U.S.C. 499; 49 U.S.C. 1655(g) (2)); 49 CFR 1.46(c) (5); 33 CFR 1.05-1(c) (4))

Effective date. This revision shall become effective on May 20, 1974.

Dated: April 15, 1974.

R. I. PRICE,
Captain U.S. Coast Guard, Deputy Chief, Office of Marine Environment and Systems, By direction of the Commandant.

[FR Doc. 74-9131 Filed 4-19-74; 8:45 am]

[CGD 72-170R]

PART 117—DRAWBRIDGE OPERATION REGULATIONS

A.I.W.W. and Stranahan River, Fla.

This amendment changes the regulations for the Southeast 17th Street

bridge across the Stranahan River at Fort Lauderdale to provide year-round rather than seasonal opening requirements. The specified hours of special operation remain unchanged. This amendment was circulated as a public notice dated September 8, 1972 by the Commander, Seventh Coast Guard District, and was published in the FEDERAL REGISTER as a notice of proposed rulemaking (CG 72-170P) on August 30, 1972 (37 FR 17561).

Ten responses were received to the proposal that the 17th Street bridge operate on a year-round basis rather than the present periods which are from November 15 through May 15 from 7 a.m. to 7 p.m. One response was for the adoption of this change, 5 had no comment and 4 opposed its adoption. After due consideration of all known factors, the Coast Guard has concluded that its adoption would not unreasonably obstruct navigation and this proposal is therefore accepted.

The proposal to operate the East Sunrise Boulevard bridge on a year-round basis rather than the present periods that are from November 15 through May 15 from 7:15 a.m. to 6:15 p.m. was opposed by the 7 responses received and its adoption is not considered reasonable at this time.

Accordingly, 33 CFR Part 117 is amended by revising paragraph (e) (1) of § 117.446 to read as follows:

§ 117.446 New River Sound and Stranahan River (Intracoastal Waterway), Fort Lauderdale, Fla., bridges.

(e) Southeast 17th Street bridge across the Stranahan River (A.I.W.W.). (1) From 7 p.m. to 7 a.m. the draw shall open on signal. From 7 a.m. to 7 p.m. the draw shall open on signal, however, the draw need not reopen for a period of 15 minutes after each closure. The owner of or agency controlling the bridge will display on both sides thereof a time clock acceptable to the District Commander which will indicate to approaching vessels the number of minutes remaining before the draw will be available for opening.

(Sec. 5, 28 Stat. 362, as amended; sec. 6(g) (2), 80 Stat. 937; (33 U.S.C. 499; 49 U.S.C. 1655(g) (2)); 49 CFR 1.46(c) (5); 33 CFR 1.05-1(c) (4))

Effective date. This revision shall become effective on May 24, 1974.

Dated: April 16, 1974.

R. I. PRICE,
Captain, U.S. Coast Guard, Acting Chief, Office of Marine Environment and Systems.

[FR Doc. 74-9130 Filed 4-19-74; 8:45 am]

[CGD 73-161R]

PART 117—DRAWBRIDGE OPERATION REGULATIONS

Root River, Wis.

This amendment changes the regulations for the Main Street bridge across

the Root River in Racine, Wisconsin, to permit additional periods when the draw need not open for the passage of vessels. This amendment was circulated as a public notice dated 16 August 1973 by the Commander, Ninth Coast Guard District, and was published in the FEDERAL REGISTER as a notice of proposed rulemaking (CGD 73-161P) on August 10, 1973 (38 FR 21650). Three responses were received, two endorsed the proposal and one had no objection.

Accordingly, 33 CFR Part 117 is amended by revising § 117.660 to read as follows:

§ 117.660 Root River, Racine, Wisconsin, Main Street and State Street bridges.

(a) The draws of these bridges shall open on signal except that

(1) The draw of the Main Street bridge may remain closed to the passage of vessels, Monday through Friday, except holidays, during the following periods:

- 7:30 a.m. to 8:10 a.m.
- 11:50 a.m. to 12:10 p.m.
- 12:50 p.m. to 1:10 p.m.
- 3:30 p.m. to 4:10 p.m.
- 4:30 p.m. to 5:10 p.m.

(2) The draw of the State Street bridge may remain closed to the passage of vessels, Monday through Friday, except holidays, during the following periods:

- 6:30 a.m. to 7 a.m.
- 12 noon to 12:45 p.m.
- 12:45 p.m. to 1 p.m.

(b) Signals:

(1) Main Street bridge—The opening signal is one long blast followed by one short blast of a whistle, horn, siren, or by shouting.

(2) State Street bridge—The opening signal is three short blasts of a whistle, horn, siren, or by shouting.

(3) The acknowledging signal from the drawtender when the draw will open promptly is the same as the opening signal or a white flag or ball by day and a white light by night, conspicuously displayed. The acknowledging signal from the drawtender when the draw cannot open promptly or is open and must close is four or more short blasts, or a red flag by day or a red light at night, conspicuously displayed.

(c) The owners of or agencies controlling these bridges shall provide the necessary drawtenders and the proper mechanical appliances for the safe, prompt and efficient opening of the draw.

(d) The draws shall open on signal at all times for vessels in distress and public vessels of the United States, state or local governments engaged in public safety or law enforcement activities.

(e) The owners of or agencies controlling these bridges shall post the provisions of this regulation on the upstream and downstream sides of the bridges or elsewhere in a manner that it can easily be read from an approaching vessel at all times.

(Sec. 5, 28 Stat. 362, as amended; sec. 6(g) (2), 80 Stat. 937; (33 U.S.C. 499, 49 U.S.C. 1655(g) (2)); 49 CFR 1.46(c) (5); 33 CFR 1.05-1(c) (4))

Effective date. This revision shall become effective on May 20, 1974.

Dated: April 11, 1974.

W. M. BENKERT,
Rear Admiral, U.S. Coast Guard,
Chief, Office of Marine Environment and Systems.

[FR Doc.74-9127 Filed 4-19-74;8:45 am]

[CGD 73-199R]

PART 117—DRAWBRIDGE OPERATION REGULATIONS

Corte Madera Creek, Calif.

This amendment changes the regulations for the Northwestern Pacific railroad bridge across Corte Madera Creek near Greenbrae, California, to increase the times the draw shall open on signal from May 1 through October 31. This amendment was circulated as a public notice dated September 13, 1973 by the Commander, Twelfth Coast Guard District and was published in the FEDERAL REGISTER as a notice of proposed rule-making (CGD 73-199P) on September 11, 1973 (38 FR 24914). Thirty-four responses were received, each of which supported the proposal. Two suggested that the opening period from May 1 through October 31 be reduced from 8 a.m. to 5 a.m. However, the Coast Guard feels that the hours proposed will provide for the reasonable needs of navigation.

Accordingly, 33 CFR Part 117 is amended by revising paragraph (e) of § 117.712 to read as follows:

§ 117.712 Tributaries of San Francisco Bay and San Pablo Bay, Calif.

(e) *Corte Madera Creek, Northwestern Pacific railroad bridge near Greenbrae.* (1) The draw shall open on signal if at least 24 hours notice has been given. However, from May 1 through October 31 on Saturdays, Sundays, and holidays that are observed on Monday and Friday during this period, the draw shall open on signal from 8 a.m. on the first day of the holiday or weekend until 10 p.m. on the last day of the weekend or holiday. If no drawtender is present during these periods the draw shall be maintained in the fully open position.

(2) The owner of or agency controlling this bridge shall keep conspicuously posted on both sides of the bridge a copy of the provisions of this paragraph together with information stating exactly how the authorized representative may be reached.

(Sec. 5, 28 Stat. 362, as amended; sec. 6(g) (2), 80 Stat. 937; (33 U.S.C. 499; 49 U.S.C. 1655(g) (2)); 49 CFR 1.46 (c) (5), 33 CFR 1.05-1(c) (4))

Effective date. This revision shall become effective on May 24, 1974.

Dated: April 16, 1974.

R. I. PRICE,
Captain, U.S. Coast Guard,
Acting Chief, Office of Marine Environment and Systems.

[FR Doc.74-9129 Filed 4-19-74;8:45 am]

Title 39—Postal Service

CHAPTER I—UNITED STATES POSTAL SERVICE

TEMPORARY RATE CHARGES

The primary purpose of this document is to place in the Code of Federal Regulations certain temporary changes in rates of domestic postage and fees for postal services which became effective on March 2, 1974. (See 39 FR 1125.) Accordingly, §§ 131.1, 132.1, 133.1, 134.1, 135.1 and 136.1 are amended to reflect these temporary rates and fees.

In addition, regulations codified under § 125.6(g) are amended to give publishers the option of reporting individually addressed transient rate copies on Form 3542 or mailing with postage affixed. The exception which required postage payment by adhesive or meter stamps or by permit imprints has been removed.

Exhibits¹ illustrating uses of Postal Service Forms 3541 and 3542, which were previously filed with the Office of the Federal Register, as explained in the note at the end of 39 CFR 125.7, have been amended to show temporary rates effective March 2, 1974 and have been filed with this document. Form 3540 is discontinued, and references to it in the codified regulations are deleted.

Regulations codified under § 132.1 (a) (2) are amended to clarify postage charges applicable to mailings made at additional entry offices.

Regulations codified under § 132.1 (e) are amended to delete minimum rates per piece from postage computations and to add a charge per piece computation procedure.

Regulations codified under § 133.2 (a) are amended to clarify qualification requirements of controlled circulation publications. In addition, other minor and technical amendments are made to these regulations.

(39 U.S.C. §§ 401, 404, 3621-3641, 84 Stat. 719).

ROGER P. CRAIG,
Deputy General Counsel.

Accordingly, the following amendments are effective immediately:

¹ Exhibits A-P filed as part of the original document.

PART 125—SECOND-CLASS BULK MAILINGS

§ 125.6 [Amended]

Section 125.6 *Weighing and collection of postage* is amended as follows.

1. Paragraph (e) is amended by changing the period at the end of the third sentence to a comma and adding the following: "Statement Showing Number of Copies of Second-Class or Controlled Circulation Publications Mailed."

2. Paragraphs (f) (1), (f) (3), (g), (h) and (i) are revised to read as follows:

(f) *Annual verification.*

(1) Verification of the date furnished on Form 3542 will be made annually at offices where there are no more than 100 publications entered as second class. At other offices verification will be accomplished by cycling over a period not to exceed 5 years as follows:

Publications entered:	Cycling period
101-200	2 years.
201-300	3 years.
301-400	4 years.
401-	5 years.

Records of the verifications on Form 3548, Postmaster and Publisher Joint Review and Verification of Circulation, must be retained, with the applicable Forms 3542.

(3) Where the verification discloses discrepancies which in the opinion of the postmaster are substantial and which cannot be resolved, the postmaster will submit a memorandum of the facts with a complete report on the reverse of Form 3501 Application for Second-Class Mail Privileges, to the Mail Classification Division, Finance Department, for advice and instructions before taking further action.

(g) *Payment of postage at time of mailing or by advance deposits.* Publishers must pay in money before the mailings are dispatched, all postage charged at the second-class rates shown in § 132.1 of this chapter. Exception: The transient rate (§ 132.1(c)) may be paid only on individual copies declared as transient on Form 3542. When postage is to be computed on a monthly basis for all issues mailed during the month, mailings of transient rate copies must be reported on separate Forms 3542 for each mailing. Transient rate may also be paid by adhesive or meter stamps or by permit imprints. (See §§ 145.3(b) and 145.5 (a) (2) of this chapter.) Postmasters will accept deposits of money to pay for as

many mailings as desired, and will give the publishers Form 3544, Post Office Receipt for Money, for the deposits.

(h) *Record of mailings.* Postage on the bulk mailings will be computed on Form 3541, Computation of Second-Class or Controlled Circulation Postage, from the weights obtained from Form 3542. The publisher will be furnished a duplicate of Form 3541 if he requests one. When postage is computed on the bulk weight of one issue, the mailings and postage will be recorded in Form 3543, Record of Second-Class Postage. When postage is computed at the end of each calendar month on the total weight of all issues mailed during the month, the total mailings and postage for the month will be computed on one Form 3541, and only the totals will be recorded in Form 3543.

(i) *How to show dates of issue and mailing.* When a number of consecutive issues is covered by one Form 3541 or Form 3542, or by one entry in Form 3543 the dates of issue and the dates of mailing must be indicated by entering the first and last dates in the appropriate spaces and columns.

§ 125.7 [Amended]

3. In § 125.7 *Key rate*, paragraph (d) (1) is amended by deleting in the second line the words "on Form 3540 or"; paragraph (d) (3) is amended by deleting in the first line the words "Form 3540 or".

4. Paragraph (d) (2) of § 125.7 is revised to read as follows:

(2) Enter on the corresponding lines in column B of Form 3541 the number of copies for each zone shown on Form 3542. Apply the applicable pound rates shown in column F to the number of copies for each zone and enter the postage for each zone in Column C of Form 3541. Divide the total postage in item 2, column C, by the total number of copies in item 2, column B, to obtain the key rate, which should be carried to six decimal places. Apply the key rate only to the total weight of the advertising portion. Apply the regular reading portion rate to the total weight of the reading portion. Computation of the key rate must be verified by an employee or supervisor other than the person who originally computed it. See exhibit A, § 125.7.

PART 131—FIRST CLASS

5. Section 131.1 *Rates* is revised to read as follows:

§ 131.1 Rates.		
	<i>Kind of mail</i>	<i>Rate</i>
All first-class mail weighing 12 ounces or less except postal and post cards. See § 136.1 (b) for rates on first-class mail weighing more than 12 ounces.		10 cents per ounce or fraction of an ounce.
Single postal cards sold by the post office.....		8 cents each.
Double postal cards sold by the post office.....		16 cents (8 cents each portion).
Single post cards.....		8 cents each.
Double post cards. (Reply portion of double post card does not have to bear postage when originally mailed).		16 cents (8 cents each portion).
Business reply mail:		
Cards.....		10 cents each.
Other than cards:		
Weight not over 2 ounces.....		10 cents per ounce or fraction of an ounce plus 2 cents per piece.
Weight over 2 ounces.....		10 cents per ounce or fraction of an ounce plus 6 cents per piece. Over 12 ounces, 6 cents per piece, plus rate in § 136.1.
Airmail.....		See § 136.1.

PART 132—SECOND CLASS

6. In § 132.1 *Rates*, paragraphs (a) (1), (a) (2), (b) (1)-(4), (c), (d), and (e) are revised to read as follows:

§ 132.1 Rates.

(a) * * *

(1) *When mailed at office of original entry.*

- (i) For delivery of publications *other than weeklies* at office of original entry by its letter carriers.
- (iii) For delivery of publications *other than weeklies* by the letter carriers at a different post office than the office of original entry within the delivery limits of which the headquarters or general business office of the publisher is located (except that the pound rates from the office of mailing apply if they are higher).
- (vi) For delivery of *weekly* publications to addressees *residing within* the county where published from all offices within or without the county *including the office of original entry.*
- (ii) For delivery of all publications, of whatever frequency, through post office boxes or general delivery, and for delivery by rural or star route carriers, *at an office of original entry which has letter carrier service.*
- (v) For delivery of all publications of whatever frequency, by whatever services are provided, *at an office of original entry which does not have letter carrier service.*
- (iv) For delivery of all publications of whatever frequency, to addressees *residing within* the county where published, from all offices within or without the county, *other than the office of original entry.*

Publications issued more frequently than weekly: 1.3¢ per copy.
Publications issued less frequently than weekly:
Copies weighing 2 ounces or less: 1.3¢ per copy.
Copies weighing more than 2 ounces: 2.3¢ per copy.

1.6¢ (one and six-tenths cents) per pound or fraction of a pound plus 0.3¢ (three tenths of a cent) per piece charge.

(2) *When mailed at office of additional entry.* (i) The per copy rates in paragraph (a) (1) (i) or (ii) of this section, for publications other than weekly, apply to copies mailed at additional entry offices and addressed for delivery either at the office of original entry or at the publisher's headquarters office, when postage at these rates is higher than the postage computed at the rates in paragraph (b) of this section.

(ii) The charges prescribed by paragraph (a) (1) (iii)-(vi) of this section also apply to copies of publications, of whatever frequency, mailed at an office of additional entry located within the county where published and entered, to addressees residing within the county, for delivery at all offices within or without the county, including the office of addi-

tional entry, by whatever delivery services are provided.

(b) * * *

(1) All publications, except those accepted at the special rate (paragraph (b) (2) of this section), classroom rate (paragraph (b) (3) of this section, or science of agriculture rate (paragraph (b) (4) of this section). All publications are subject to the charges in paragraph (b) (1) (i) and (ii) of this section.

(i) Rates in cents per pound or fraction of a pound:

Nonadvertising portion.....	5.0
Advertising portion:	
Zones 1 and 2.....	6.9
Zone 3.....	7.9
Zone 4.....	9.8
Zone 5.....	11.9
Zone 6.....	14.1
Zone 7.....	15.5
Zone 8.....	17.9

(ii) Per piece charge:

(a) All publications except those provided for in (a).....	1.1
(b) Publication mailing less than 5,000 copies per issue outside the county of publication.....	0.3

(2) *Special rate publications.* All publications are subject to the charges in both paragraphs (b) (2) (i) and (ii) of this section.

(i) Rates in cents per pound or fraction of a pound:

Nonadvertising portion.....	2.8
Advertising portion:	
Zones 1 and 2.....	4.9
Zone 3.....	5.6
Zone 4.....	7.2
Zone 5.....	8.8
Zone 6.....	9.7
Zone 7.....	10.1
Zone 8.....	10.5

(ii) Per piece charge..... 0.4

(iii) The zone rates in paragraph (b)

(2) (i) of this section are applicable to issues in which the advertising portion exceeds ten percent. Issues containing ten percent or less advertising shall be computed at the nonadvertising rate in paragraph (b) (2) (i) of this section.

(iv) The rates in paragraph (b) (2) (i), (ii) and (iii) of this section apply only to publications issued by and in the interest of the following organizations and associations (see § 134.5(b) for definitions of organizations listed in paragraph (b) (2) (iv) (a)-(h) of this section) not organized for profit and none of the net income of which benefits any private stockholder or individual, when specially authorized by the Postal Service: (See § 132.3(c) (1)).

- (a) Religious.
- (b) Educational.
- (c) Scientific.
- (d) Philanthropic.
- (e) Agricultural.
- (f) Labor.
- (g) Veterans.
- (h) Fraternal.
- (i) Associations of rural electric cooperatives.

(j) The official highway or development agency of a State (limited to one publication that meets all the require-

ments of § 132.2(b) and that contains no advertising).

(k) Program announcements or guides published by an educational radio or television agency of a State or political subdivision thereof or by a nonprofit educational radio or television station.

(3) *Classroom publications.* (Religious, educational, or scientific publications designed specifically for use in school classrooms or in religious instruction classes.) All publications are subject to the charges in paragraph (b) (3) (i) and (ii) of this section.

(i) Rates in cents per pound or fraction of a pound:

Nonadvertising portion.....	2.4
Advertising portion:	
Zones 1 and 2.....	3.6
Zone 3.....	4.3
Zone 4.....	5.7
Zone 5.....	7.1
Zone 6.....	8.7
Zone 7.....	9.6
Zone 8.....	11.2

(ii) Per piece charge..... 0.3

(4) *Science of agriculture publications.* The rates in paragraph (b) (1) (i) and (ii) of this section apply to publications devoted to promoting the science of agriculture. Exception: When the total number of copies furnished during any 12-month period to subscribers residing in rural areas consists of at least 70 percent of the total number of copies distributed by any means for any purpose, the rate for zones 1 and 2, for the advertising portion, is 5 cents per pound.

(c) *Transient rate.*

Copies mailed by public. 8 cents for first 2 ounces; 2 cents each additional ounce or fraction thereof; or the fourth-class rate, whichever is lower.

(d) *Second-class rates to other countries.* See Publication 42, "International Mail."

(e) *Computation of postage charges.*

The pound rates for both within (paragraph (a) (1) (i) of this section) and outside (paragraph (b) (1) (i) of this section) the county of publication are computed on the bulk weight of a mailing. The charge per piece for both within (paragraph (a) (1) (ii) of this section) and outside (paragraph (b) (1) (ii) of this section) the county of publication is computed on individually addressed pieces consisting either of single copies or packages containing unaddressed copies. When two or more unaddressed copies

are mailed in a package, the package is considered as one piece. The per piece charge is applicable to all pound rate mailings.

PART 133—CONTROLLED CIRCULATION PUBLICATIONS

7. Section 133.1 and 133.2 (a) and (b) are revised to read as follows:

§ 133.1 Rates.

Per pound or fraction of a pound. 16.0 cents.
Minimum rate per piece..... 4.6 cents.

§ 133.2 Permits.

(a) *Qualifications.* Publications must:
(1) Contain at least 24 pages.
(2) Contain at least 25 percent nonadvertising.

(3) Be issued at regular intervals of four or more times a year.

(4) Not be owned and controlled by individuals or business concerns and conducted as an auxiliary to and essentially for the advancement of the main business or calling of those who own or control them.

(b) *Applications.* Apply by letter to the postmaster at the office where mailings are to be made. State the name of the publication, frequency of issue, where published, the name of the publisher, and whether the publication is circulated free or mainly free. Submit two copies of the issue published nearest to the date of application marked to show the nonadvertising content as required in § 133.4. The postmaster will submit the application and one copy of the publication to Manager, Mail Classification Division, Finance Department, Washington, DC 20260. Notice of authorization or disapproval will be furnished by the Manager, Mail Classification Division.

PART 134—THIRD CLASS

8. Section 134.1 is revised to read as follows:

§ 134.1 Rates.

(a) *Single piece rate.* All matter not in the first or second class (see § 134.3(a) for weight limit) except mailings made under § 134.1 (b) and (c); 8 cents each 2 ounces or fraction of 2 ounces. Minimum rate is 10 cents per piece, if the piece is 2 ounces or less. If more than 2 ounces, the 8-cent rate applies to all 2-ounce steps.

(b) *Bulk rates.* (See §§ 134.2(b) (2) and 134.4(b).)

	Special rates for authorized organizations only (see § 134.5)	Regular rates
(1) Books and catalogs having 24 or more bound pages with at least 22 printed, seeds, cuttings, bulbs, roots, scions, and plants (see § 134.3(a) for weight limit). Minimum rate per piece:	9 cents per pound or fraction.	28 cents per pound or fraction.
First 250,000 pieces mailed during each calendar year.....	1.7 cents.....	6.1 cents.
Pieces in excess of 250,000 mailed during each calendar year (see paragraph (b) (4)).	1.7 cents.....	6.3 cents.
(2) All matter, except the items in subparagraph (1) above, not included in the first- or second-class (see § 134.3(a) for weight limit). Minimum rate per piece:	11 cents per pound or fraction.	32 cents per pound or fraction.
First 250,000 pieces mailed during each calendar year.....	1.7 cents.....	6.1 cents.
Pieces in excess of 250,000 mailed during each calendar year (see paragraph (b) (4)).	1.7 cents.....	6.3 cents.

(3) If the total postage computed at the pound rate does not amount to the minimum rate per piece or more, postage must be computed at the minimum charge per piece. (See § 134.2(b) (2) (i).)

(4) When mailings are made at the minimum per piece rates of 6.1 cents provided by subparagraphs (1) and (2) above, the mailer or his agent must show on each Form 3602, Statement of Mailing Matter with Permit Imprints, or Form 3602-PC, Bulk Rate Mailing Statement—Third-Class Mail, that his total mailings, including all those made at bulk pound rates and at minimum per piece rates, at all post offices, under any name, for each current calendar year, have not exceeded 250,000 pieces. It is the responsibility of the mailer or his agent to make available upon request of postal officials whatever information is necessary to show the payment of correct minimum per piece rates on all mailings made during each calendar year. Postmasters must regularly review the records of mailings being made at the bulk third-class pound and piece rates for the purpose of determining from the identity of the mailer, the number of pieces mailed, the character of the mailing pieces, or any other facts, whether the correct minimum per piece rate is being paid. If any postmaster is in doubt as to whether the 250,000 limitation has been exceeded in a particular case, he shall submit all the facts to the Mail Classification Division, Finance Department.

(c) *Keys, identification cards, identification tags, or similar identification devices.* Keys, identification cards, identification tags, or similar identification devices that are without cover and that bear, contain, or have securely attached the name and complete post office address of a person, organization, or concern with instructions to return to such address and a statement guaranteeing the payment of the postage due on delivery: 16 cents for the first 2 ounces and 9 cents for each additional 2 ounces or fraction thereof.

PART 135—FOURTH CLASS

9. Section 135.1 is revised to read as follows:

§ 135.1 Rates.

(a) *Fourth-class (parcel post) zone rates.*

Weight	Zones								
	1 pound and not exceeding—	Local	1 and 2	3	4	5	6	7	8
POUNDS									
2	\$0.61	\$0.72	\$0.75	\$0.83	\$0.92	\$1.02	\$1.12	\$1.21	\$1.31
3	.65	.78	.83	.92	1.04	1.13	1.22	1.32	1.42
4	.69	.84	.90	1.01	1.16	1.23	1.33	1.43	1.53
5	.73	.90	.98	1.10	1.28	1.49	1.71	1.93	2.17
6	.77	.96	1.05	1.19	1.40	1.64	1.90	2.17	2.47
7	.81	1.02	1.13	1.28	1.52	1.80	2.10	2.41	2.77
8	.85	1.08	1.20	1.37	1.64	1.95	2.29	2.65	3.05
9	.89	1.14	1.28	1.46	1.76	2.11	2.49	2.89	3.33
10	.93	1.20	1.35	1.55	1.88	2.26	2.68	3.13	3.63
11	.97	1.26	1.43	1.64	2.00	2.42	2.88	3.37	3.91
12	1.01	1.32	1.50	1.73	2.12	2.57	3.07	3.61	4.19
13	1.05	1.38	1.58	1.82	2.24	2.73	3.27	3.85	4.47
14	1.09	1.44	1.65	1.91	2.36	2.88	3.46	4.09	4.77
15	1.13	1.50	1.73	2.00	2.48	3.04	3.66	4.33	5.05
16	1.17	1.56	1.80	2.09	2.60	3.19	3.85	4.57	5.35
17	1.21	1.62	1.88	2.18	2.72	3.35	4.05	4.81	5.65
18	1.25	1.68	1.95	2.27	2.84	3.50	4.24	5.05	5.93
19	1.29	1.74	2.03	2.36	2.95	3.66	4.44	5.29	6.21
20	1.33	1.80	2.10	2.45	3.08	3.81	4.63	5.53	6.47
21	1.37	1.86	2.18	2.54	3.20	3.97	4.83	5.77	6.73
22	1.41	1.92	2.25	2.63	3.32	4.12	5.02	6.01	7.03
23	1.45	1.98	2.33	2.72	3.44	4.28	5.22	6.25	7.31
24	1.49	2.04	2.40	2.81	3.56	4.43	5.41	6.49	7.61
25	1.53	2.10	2.48	2.90	3.68	4.59	5.61	6.73	7.89
26	1.57	2.16	2.55	2.99	3.80	4.74	5.80	6.97	8.19
27	1.61	2.22	2.63	3.08	3.92	4.90	6.00	7.21	8.47
28	1.65	2.28	2.70	3.17	4.04	5.05	6.19	7.45	8.77
29	1.69	2.34	2.78	3.26	4.16	5.21	6.39	7.69	9.05
30	1.73	2.40	2.85	3.35	4.28	5.36	6.58	7.93	9.33
31	1.77	2.46	2.93	3.44	4.40	5.52	6.78	8.17	9.61
32	1.81	2.52	3.00	3.53	4.52	5.67	6.97	8.41	9.89
33	1.85	2.58	3.08	3.62	4.64	5.83	7.17	8.65	10.17
34	1.89	2.64	3.15	3.71	4.76	5.98	7.36	8.89	10.45
35	1.93	2.70	3.23	3.80	4.88	6.14	7.56	9.13	10.73
36	1.97	2.76	3.30	3.89	5.00	6.29	7.75	9.37	11.01
37	1.99	2.82	3.38	3.98	5.12	6.45	7.95	9.61	11.29
38	1.99	2.88	3.45	4.07	5.24	6.60	8.14	9.85	11.57
39	2.06	2.94	3.53	4.16	5.36	6.76	8.34	10.09	11.85
40	2.06	3.00	3.60	4.25	5.48	6.91	8.53	10.33	12.13
41	2.13	3.06	3.68	4.34	5.60	7.07	8.73	10.57	12.41
42	2.19	3.12	3.75	4.43	5.72	7.22	8.92	10.81	12.69
43	2.19	3.18	3.83	4.52	5.84	7.38	9.12	11.05	12.97
44	2.26	3.24	3.90	4.61	5.96	7.53	9.31	11.29	13.25
45	2.26	3.30	3.98	4.70	6.08	7.69	9.51	11.53	13.53
46	2.26	3.36	4.05	4.79	6.20	7.84	9.70	11.77	13.81
47	2.33	3.42	4.13	4.88	6.32	8.00	9.90	12.01	14.09
48	2.33	3.48	4.20	4.97	6.44	8.15	10.09	12.25	14.37
49	2.39	3.54	4.28	5.06	6.56	8.31	10.29	12.49	14.65
50	2.39	3.60	4.35	5.15	6.68	8.46	10.48	12.73	14.93
51	2.46	3.66	4.43	5.24	6.80	8.62	10.68	12.97	15.21
52	2.53	3.72	4.50	5.33	6.92	8.77	10.87	13.21	15.49
53	2.53	3.78	4.58	5.42	7.04	8.93	11.07	13.45	15.77
54	2.59	3.84	4.65	5.51	7.16	9.08	11.26	13.69	16.05
55	2.59	3.90	4.73	5.60	7.28	9.24	11.46	13.93	16.33
56	2.59	3.96	4.80	5.69	7.40	9.39	11.65	14.17	16.61
57	2.66	4.02	4.88	5.78	7.52	9.55	11.85	14.41	16.89
58	2.66	4.08	4.95	5.87	7.64	9.70	12.04	14.65	17.17
59	2.73	4.14	5.03	5.96	7.76	9.86	12.24	14.89	17.45
60	2.73	4.20	5.10	6.05	7.88	10.01	12.43	15.13	17.73
61	2.79	4.26	5.18	6.14	8.00	10.17	12.63	15.37	18.01
62	2.86	4.32	5.25	6.23	8.12	10.32	12.82	15.61	18.29
63	2.86	4.38	5.33	6.32	8.24	10.48	13.02	15.85	18.57
64	2.93	4.44	5.40	6.41	8.36	10.63	13.21	16.09	18.85
65	2.93	4.50	5.48	6.50	8.48	10.79	13.41	16.33	19.13
66	2.93	4.56	5.55	6.59	8.60	10.94	13.60	16.57	19.41
67	2.99	4.62	5.63	6.68	8.72	11.10	13.80	16.81	19.69
68	2.99	4.68	5.70	6.77	8.84	11.25	13.99	17.05	19.97
69	3.06	4.74	5.78	6.86	8.96	11.41	14.19	17.29	20.25
70	3.06	4.80	5.85	6.95	9.08	11.56	14.38	17.53	20.53

Exceptions:

- (1) Parcels weighing less than 10 pounds, and measuring over 84 inches but not exceeding 100 inches in length and girth combined, are chargeable with a minimum rate equal to that for a 10 pound parcel for the zone to which addressed. See § 135.3 for size and weight restrictions.
- (2) For catalogs weighing up to 10 pounds, see paragraph (b) of this section.
- (3) For books and library books, see paragraph (c) and (d) of this section.
- (4) For 16-millimeter films, 16-

millimeter film catalogs and related materials, see paragraphs (c) and (d) of this section.

(5) Gold mailed within Alaska or from Alaska to other States and U.S. possessions: 2 cents each ounce or fraction, regardless of distance.

(b) *Catalogs and similar printed advertising matter in bound form having 24 or more pages, at least 22 of which are printed, weighing 16 ounces or more but not exceeding 10 pounds—*(1) Rates for bulk mailings of separately addressed identical pieces in quantities of not less than 300 mailed at one time.

Zones	Piece rate	Bulk pound rate
	(cents)	(cents)
Local.....	24	2.4
1 and 2.....	28	3.8
3.....	28	4.4
4.....	28	5.5
5.....	28	6.8
6.....	28	8.4
7.....	28	10.2
8.....	29	12.2

NOTE: The total charge for each bulk mailing shall be the sum of the charges derived by applying the applicable pound rate to the total number of pounds and by applying the applicable piece rate to the total number of pieces.

(i) *Postage.* Postage must be paid by permit imprints. Each imprint must show name of the post office, permit number, and the words *U.S. Postage Paid*, unless the mailer is authorized to use a company permit imprint as provided in § 145.3(c). The words *Bulk Catalog Rate* shall be printed within the permit imprint. The position of the imprint may be varied so that automatic data processing equipment may be utilized to simultaneously print the address, imprint and any other information.

(ii) *Mailing statement.* The mailer must submit with each mailing a statement on Form 3605, *Mailing Statement—4th Class Bulk Rates*, showing:

- Weight of a single piece.
- Number of pieces addressed for delivery in each zone.
- Total number of pieces in the mailing.
- Number of pounds for delivery in each zone.
- Total per piece charge for each zone.
- Total pound rate postage for each zone.
- Sum of postage at the per piece rate and at the pound rate.
- Name and address of mailer and permit number.

(iii) *Separation required.* The mailer must separate mailing pieces by parcel post zones so that postage may be verified. Mail for each parcel post zone must be further separated and placed in sacks by cities or States of destination in each instance where there are 10 or more pieces for the same post office or State, or where 5 or more catalogs weigh 10 or more pounds. Use No. 3 mail sacks except when greater volume requires the use of No. 2 mail sacks. When there is insufficient volume for a direct sack or a State sack, combine the pieces in sacks for mixed States by parcel post zones. Label each sack to include parcel post zone separation and destination.

(iv) *Separations recommended.* In addition to the separations required in subdivision (iii) of this subparagraph, it is recommended that the mailer separate the pieces of the finest extent possible in the manner prescribed by § 134.4(c) of this chapter.

(v) *Maximum weight in a sack.* The total weight of pieces placed in one sack must not exceed 70 pounds.

(2) *Optional handling of bulk mailings*

of catalogs weighing in excess of 2 pounds when addressed for delivery in local parcel post zone only. Address labels and unaddressed catalogs weighing in excess of 2 pounds, at the option of the mailer, may be mailed separately for local delivery at the office of mailing subject to all of the following conditions:

(i) The address labels, which may not measure less than 3 by 4¼ inches, must show the full name and ZIP Code address of the sender and addressee and must be sorted by the mailer to the fourth and fifth digit of the ZIP Code.

(ii) Postage must be paid by permit imprints for each label, including labels returned as undeliverable. The imprint may be placed on the catalog or on the label. See § 145.1(a) of this chapter. The imprints must be prepared in the manner prescribed in subparagraph (1) (i) of this paragraph.

(iii) The mailer must submit with each mailing a statement on Form 3605 showing:

- The weight of a single piece.
- Total numbers of pieces in the mailing.
- Total number of pounds in the mailing.
- Total per piece charge.
- Total pound rate postage.
- Sum of postage at the per piece rate and at the pound rate.
- Name and address of mailer and permit number.
- The total weight of pieces placed in sacks, cartons, crates or any other types of containers must not exceed 70 pounds.
- The address labels must be sent to the postmaster at the mailing (delivery) office by the mailer.

(vi) Address labels bearing incorrect, nonexistent or any other undeliverable addresses will be corrected or endorsed to show why they are undeliverable and returned under cover to the mailer. Each envelope shall be rated with postage due at the rate of 10 cents for each address label contained in the envelope. At the request of the mailer, the postmaster will notify the mailer, at mailer's expense and by means specified by mailer, of the number of address labels being returned. The request for notification must accompany the labels. Correctly addressed labels will be held awaiting arrival of the catalogs.

(vii) Catalogs will be deposited at the acceptance point designated by the postmaster. If the number of catalogs deposited is not enough or too many to match the number of address labels, the postmaster will notify the sender, or his designated representative or agent, of the number of catalogs required to complete the delivery or the number in excess. If the additional catalogs are not delivered to the post office within 15 days, the excess address labels will be returned under cover to the mailer. As soon as deliveries are completed, the postmaster will notify the sender or his representative of the number of any excess catalogs on hand. Excess catalogs may be called for by the mailer without charge. Any excess catalogs not called for within 15 days will be returned to sender postage due at the single piece catalog rate.

(3) *Single piece rates for individual mailings of catalogs (catalogs mailed at these rates must be marked catalogs) not mailed at bulk catalog rates in § 135.1 (b) (1).*

Weight (pounds)	Zones							
	Local	1 & 2	3	4	5	6	7	8
	(cents)							
1.5.....	34	41	42	44	46	48	51	55
2.....	36	43	44	47	49	52	56	61
2.5.....	36	45	46	50	53	56	61	67
3.....	38	47	49	52	56	61	66	73
3.5.....	39	49	51	55	60	65	71	79
4.....	40	51	53	58	63	69	77	86
4.5.....	41	52	55	61	66	73	82	92
5.....	42	54	57	63	70	77	87	98
6.....	45	58	62	69	77	86	97	110
7.....	47	62	66	74	83	94	107	122
8.....	50	66	71	80	90	103	117	134
9.....	52	70	75	85	97	111	128	147
10.....	54	73	79	91	104	119	138	160

(c) *Special fourth-class rate.*

Kind of mail (Rate restricted to items specifically named)	Rate (without regard to zone)	
	First pound or fraction of a pound	Each additional pound or fraction
Books; 16-millimeter or narrower width films and catalogs of such films (rate applies for films and catalogs except when mailed to or from commercial theaters); printed music, printed objective test materials, sound recordings, playscripts and manuscripts for books, periodicals and music; printed educational reference charts permanently processed for preservation; loose-leaf pages, and binders therefor, consisting of medical information for distribution to doctors, hospitals, medical schools, and medical students. See § 135.2(a) (4).	Cents 18	Cents 8

(d) *Library rate.*

Kind of mail (Rate restricted to items specifically named mailed by or to organizations mentioned in § 135.2(a)(5))	Rate (Without regard to zone)	
	First pound or fraction of a pound	Each additional pound or fraction
Books; printed music; bound volumes of academic theses; sound recordings; periodicals; other library materials; museum and herbarium materials; 16-millimeter or narrower width films, filmstrips, transparencies, slides, microfilms; scientific or mathematical kits, instruments, or other devices; also, catalogs, guides or scripts for some of these materials. See § 135.2(a)(5)	Cents	Cents
	6	

PART 136—AIR AND PRIORITY MAIL

10. Section 136.1 is revised to read as follows:

§ 136.1 Rates.

(a) Airmail.

Weight	Kind of mail	Rate
9 ounces or less	Air postal or post cards	11 cents each.
	Letters and packages	13 cents an ounce.
	Business reply (See § 131.2(c)):	
	Air cards	13 cents each.
	Airmail other than cards:	
	Weight not over 2 ounces	13 cents an ounce, plus 2 cents per piece.
	Weight over 2 ounces	13 cents an ounce, plus 6 cents per piece. Over 9 ounces priority rates plus 6 cents per piece.

(b) Priority mail (heavy pieces).

Weight over 9 ounces and not exceeding—pound(s)	Rate					
	Local zones 1, 2, and 3	Zone 4	Zone 5	Zone 6	Zone 7	Zone 8
1	\$1.25	\$1.25	\$1.25	\$1.30	\$1.30	\$1.30
1½	1.50	1.54	1.60	1.68	1.75	1.82
2	1.75	1.83	1.95	2.06	2.20	2.34
2½	1.98	2.08	2.17	2.31	2.48	2.65
3	2.11	2.23	2.39	2.56	2.76	2.96
3½	2.29	2.43	2.61	2.81	3.04	3.27
4	2.47	2.63	2.83	3.06	3.32	3.58
4½	2.65	2.83	3.05	3.31	3.60	3.89
5	2.83	3.03	3.27	3.56	3.88	4.20
6	3.19	3.43	3.71	4.06	4.44	4.82
7	3.55	3.83	4.15	4.56	5.00	5.44
8	3.91	4.23	4.59	5.06	5.56	6.06
9	4.27	4.63	5.03	5.56	6.12	6.68
10	4.63	5.03	5.47	6.06	6.68	7.30
11	4.99	5.43	5.91	6.56	7.24	7.92
12	5.35	5.83	6.35	7.06	7.80	8.54
13	5.71	6.23	6.79	7.56	8.36	9.16
14	6.07	6.63	7.23	8.06	8.92	9.78
15	6.43	7.03	7.67	8.56	9.48	10.40
16	6.79	7.43	8.11	9.06	10.04	11.02
17	7.15	7.83	8.55	9.56	10.60	11.64
18	7.51	8.23	8.99	10.06	11.16	12.26
19	7.87	8.63	9.43	10.56	11.72	12.88
20	8.23	9.03	9.87	11.06	12.28	13.50
21	8.59	9.43	10.31	11.56	12.84	14.12
22	8.95	9.83	10.75	12.06	13.40	14.74
23	9.31	10.23	11.19	12.56	13.96	15.36
24	9.67	10.63	11.63	13.06	14.52	15.98
25	10.03	11.03	12.07	13.56	15.08	16.60

Weight over 9 ounces and not exceeding—pound(s)	Rate					
	Local zones 1, 2, and 3	Zone 4	Zone 5	Zone 6	Zone 7	Zone 8
26	\$10.39	\$11.43	\$12.51	\$14.06	\$15.64	\$17.22
27	10.75	11.83	12.95	14.56	16.20	17.84
28	11.11	12.23	13.39	15.06	16.76	18.46
29	11.47	12.63	13.83	15.56	17.32	19.08
30	11.83	13.03	14.27	16.06	17.88	19.70
31	12.19	13.43	14.71	16.56	18.44	20.32
32	12.55	13.83	15.15	17.06	19.00	20.94
33	12.91	14.23	15.59	17.56	19.56	21.56
34	13.27	14.63	16.03	18.06	20.12	22.18
35	13.63	15.03	16.47	18.56	20.68	22.80
36	13.99	15.43	16.91	19.06	21.24	23.42
37	14.35	15.83	17.35	19.56	21.80	24.04
38	14.71	16.23	17.79	20.06	22.36	24.66
39	15.07	16.63	18.23	20.56	22.92	25.28
40	15.43	17.03	18.67	21.06	23.48	25.90
41	15.79	17.43	19.11	21.56	24.04	26.52
42	16.15	17.83	19.55	22.06	24.60	27.14
43	16.51	18.23	19.99	22.56	25.16	27.76
44	16.87	18.63	20.43	23.06	25.72	28.38
45	17.23	19.03	20.87	23.56	26.28	29.00
46	17.59	19.43	21.31	24.06	26.84	29.62
47	17.95	19.83	21.75	24.56	27.40	30.24
48	18.31	20.23	22.19	25.06	27.96	30.86
49	18.67	20.63	22.63	25.56	28.52	31.48
50	19.03	21.03	23.07	26.06	29.08	32.10
51	19.39	21.43	23.51	26.56	29.64	32.72
52	19.75	21.83	23.95	27.06	30.20	33.34
53	20.11	22.23	24.39	27.56	30.76	33.96
54	20.47	22.63	24.83	28.06	31.32	34.58
55	20.83	23.03	25.27	28.56	31.88	35.20
56	21.19	23.43	25.71	29.06	32.44	35.82
57	21.55	23.83	26.15	29.56	33.00	36.44
58	21.91	24.23	26.59	30.06	33.56	37.06
59	22.27	24.63	27.03	30.56	34.12	37.68
60	22.63	25.03	27.47	31.06	34.68	38.30
61	22.99	25.43	27.91	31.56	35.24	38.92
62	23.35	25.83	28.35	32.06	35.80	39.54
63	23.71	26.23	28.79	32.56	36.36	40.16
64	24.07	26.63	29.23	33.06	36.92	40.78
65	24.43	27.03	29.67	33.56	37.48	41.40
66	24.79	27.43	30.11	34.06	38.04	42.02
67	25.15	27.83	30.55	34.56	38.60	42.64
68	25.51	28.23	30.99	35.06	39.16	43.26
69	25.87	28.63	31.43	35.56	39.72	43.88
70	26.23	29.03	31.87	36.06	40.28	44.50

EXCEPTION: Parcels weighing less than 10 pounds, measuring over 84 inches but not exceeding 100 inches in length and girth combined, are chargeable with a minimum rate equal to that for a 10-pound parcel for the zone to which addressed.

[FR Doc.74-8819 Filed 4-19-74;8:45 am]

Title 40—Protection of Environment
CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY
SUBCHAPTER C—AIR PROGRAMS
PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Nevada; Approval and Disapproval of Compliance Schedules

On May 31, 1972 (37 FR 10842), and July 27, 1972 (37 FR 15080), pursuant to section 110 of the Clean Air Act and 40 CFR Part 51, the Administrator approved portions of the Nevada plan for the implementation of the national ambient air quality standards. On February 15, 1973 and August 13, 1973, after notice and public hearing, the Governor of Nevada submitted to the Environmental Protection Agency (EPA) revisions to the compliance schedule portion of the approved plan. The approval and disapproval of these revisions was proposed on November 23, 1973 (38 FR 32267), and December 13, 1973 (38 FR 34330). This publication approves these revisions with specific exceptions pursuant to provisions of 40 CFR 51.8.

Seventeen compliance schedules were submitted. Of these, sixteen were evaluated and proposed for approval and disapproval. Ten of the sixteen were pro-

posed for approval and six were proposed for disapproval. Review of the compliance schedule for the Kennecott Copper Corporation, Nevada Mines Division, is pending the result of a hearing being held on March 12, 1974 to consider granting a one-year postponement pursuant to section 110(f) of the Act.

The Administrator received comments from the State of Nevada certifying that five sources whose compliance schedules were proposed for approval or disapproval are in compliance with all applicable air quality regulations. Therefore, the Administrator will take no action with regard to the compliance schedules originally proposed for these sources.

Similarly, the Administrator will take no action with regard to the compliance schedules of four other sources proposed for approval in the November 23, 1973 and December 13, 1973 FEDERAL REGISTER notices whose dates for final compliance will have passed by the date of this publication.

The Administrator also received and considered public comments concerning the proposed disapproval of the compliance schedule submitted by the State of Nevada for Basic, Incorporated. Certain of the comments noted that the proposed schedule requires Basic, Incorporated, to comply with secondary ambient air qual-

ity standards, and suggested that the compliance schedule therefore be approved. However, EPA is required to disapprove the compliance schedule submitted for an individual source which does not require the source to comply with applicable emission limitations which are part of the approved control strategy.

Five of the schedules submitted have been found to not satisfy the requirements of 40 CFR Part 51. Three, Jack N. Tedford, Incorporated, Duval Corporation, and U.S. Gypsum Corporation, are not legally enforceable. One, Basic, Incorporated, as discussed above, is not directed towards compliance with applicable emission limitations. One, Southern California Edison Company, has a final compliance date extending beyond the approved date for attainment of ambient air quality standards. These five schedules are disapproved.

Two of the remaining schedules, Morrison and Weatherly Chemicals Incorporated, and Eagle-Picher Industries, have been found to satisfy the requirement of 40 CFR Part 51 and to be consistent with the approved control strategy and are approved.

Each revision established a new date by which an individual air pollution source must comply with an emission limitation specified by the Implementation Plan. This date is indicated in the table below under the heading "Final Compliance Date." In some cases, the schedule includes incremental steps towards compliance with interim dates for achieving these steps. While the table below does not list these interim dates, the actual compliance schedule does. An evaluation of each schedule is available for public inspection at the Regional Office of the Environmental Protection Agency at the address noted below. In each case, the record of the appropriate public hearing has been reviewed and considered in the evaluation.

State and local compliance schedule revisions are available at the appropriate State or local agency and at the Regional Office of the Environmental Protection Agency. The location of these offices are as follows:

Environmental Protection Agency
 100 California Street
 San Francisco, California 94111
 Nevada Environmental Commission
 201 South Fall Street
 Carson City, Nevada 89701
 Clark County District Health Department
 625 Shadow Lane
 Las Vegas, Nevada 89106

These regulations are effective May 22, 1974.

(42 USC 1857c-5)

Dated: April 12, 1974.

JOHN QUARLES,
 Acting Administrator.

Part 52 of 40 CFR Chapter I, is amended as follows:

Subpart DD—Nevada

1. In § 52.1482, two new paragraphs (b) and (c) are added as follows:

§ 52.1482 Compliance Schedules.

(b) The compliance schedules for the sources identified below are approved as

meeting the requirements of § 51.15 of this chapter. All regulations cited are air pollution control regulations of the state, unless otherwise noted.

Source	Location	Regulation involved	Date of adoption	Effective date	Final compliance date
Morrison & Weatherly Chemicals, Inc.	McGill	Article 4	Feb. 13, 1973	Immediately	Mar. 31, 1974
Eagle-Picher Industries	Colado & Clark	Article 7			
		Article 4	do	do	May 31, 1975
		Article 7			

(c) The compliance schedule revisions submitted for the sources identified below are disapproved as not meeting the requirement of § 51.15 of this chapter. All regulations cited are air pollution control regulations of the State, unless otherwise noted.

Source	Location	Regulation involved	Date of adoption
Jack N. Tedford, Inc.	Fallon	Not given	Aug. 14, 1972
Basic, Inc.	Gabbs	Article 4	Feb. 13, 1973
		Article 7	June 26, 1973
Duval Corp.	Battle Mountain	Article 5	Feb. 13, 1973
U.S. Gypsum Corp.	Empire	Washoe Co.	Jan. 18, 1973
		Section 40.005	
		Section 40.010	
		Section 40.020	
Mohave Generating Station, Southern California Edison Co.	Laughlin	Clark Co.	Jan. 11, 1973
		Section 16	July 17, 1973
		Section 26	

[FR Doc.74-9100 Filed 4-19-74;8:45 am]

Title 42—Public Health

CHAPTER I—PUBLIC HEALTH SERVICE, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Subchapter D—Grants

PART 54b—GRANTS TO STATES FOR DRUG ABUSE PREVENTION FUNCTIONS

Notice of proposed rule making, public rule making procedures, and postponement of effective date have been omitted in the issuance of the following revision of § 54b.102 of Part 54b (which relates solely to allotments to States for drug abuse prevention functions) pursuant to section 409 of the Drug Abuse Office and Treatment Act of 1972 (86 Stat. 80, 21 U.S.C. 1176) because for good cause it has been found that such notice, public participation, and delay would be contrary to the public interest in light of the need for the orderly development and consideration of appropriate State plans and program proposals for the current fiscal year.

The purpose of the revision is to establish a more equitable formula for the allotment of funds among the States. To insure that no State will be harmed as a result of the establishment of a new formula, the regulation provides that a State's allotment for fiscal year 1974 shall not be less than its allotment for fiscal year 1973.

This regulation shall be effective April 22, 1974.

(Catalog of Federal Domestic Assistance Program No. 13.269, Mental Health—Drug Abuse Formula Grants.)

Dated: March 14, 1974.

CHARLES C. EDWARDS,
Assistant Secretary for Health.

Approved: April 15, 1974.

FRANK CARLUCCI,
Acting Secretary.

Section 54b.102 of 42 CFR Part 54b is revised to read as follows:

§ 54b.102 Allotments.

(a) *Allotments to States.* The allotments to the States under Section 409 of the Drug Abuse Office and Treatment Act of 1972 shall be computed by the Secretary as follows:

(1) One-third weight on the basis of need for more effective conduct of drug abuse prevention functions, expressed by the relationship of the population in each State to the total population of all the States;

(2) Two-thirds weight on the basis of total population weighted by financial need, as determined by the relative per capita income for each State for the three most recent consecutive years for which data is available from the United States Department of Commerce.

(3) The allotments to the States for fiscal year 1974 computed pursuant to subparagraphs (1) and (2) of this paragraph shall be adjusted so that the total

allotment to any State for fiscal year 1974 will not be less than the amount allotted to it for fiscal year 1973.

(b) If, after determining the amount of the allotment for each State in accordance with paragraph (a) of this section, it appears that any State (with the exception of the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands) would receive less than the minimum allotment prescribed by section 409(c)(1) of the Drug Abuse Office and Treatment Act of 1972, The Secretary shall reduce the shares of each State which would receive more than such minimum allotment by an equal percentage and reallocate such sums as required to assure that every State (other than the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands) will receive at least the prescribed minimum allotment.

[FR Doc.74-9164 Filed 4-19-74;8:45 am]

Title 47—Telecommunication

CHAPTER I—FEDERAL COMMUNICATIONS COMMISSION

[FCC 74-347]

PART 87—AVIATION SERVICES

Frequency Stability for Civil Air Patrol Stations

In the matter of amendment of Part 87 of the rules to permit less critical frequency tolerance for single-sideband operations by Civil Air Patrol stations, RM 2248.

1. The Civil Air Patrol (CAP), a civilian auxiliary of the United States Air Force, has filed a petition for rule changes to provide relief from the frequency stability required for single sideband (SSB) operations by CAP mobile stations on frequencies below 25 MHz. These stations are now assigned government frequencies in the 2 and 4 MHz bands. Petitioner requested that it be required only to maintain the carrier frequency in these operations to within 100 Hz.

2. In the Order on RM 1177 (FCC 68-626, released June 14, 1968), the Commission specified that the frequency stability for all CAP stations be within 50 Hz until January 1, 1973.

3. CAP makes the following statements in support of its petition:

a. No SSB equipment of recent design has been obtainable from DOD excess sources. Consequently, most of the equipment in use has been purchased by individual volunteers and leased to the CAP at no cost for licensing and control purposes. Out of a total of 4000 CAP stations, 2500 are mobile stations.

b. Frequency stability tests conducted show frequency drifts of 42 Hz to 83

Hz. The land stations are able to maintain the 50 Hz tolerance by turning on the equipment well in advance of scheduled net activities; however, warm-up periods of such length are impracticable in mobile operations. Space in mobile transmitters is at a premium, particularly near the frequency controlling elements, and would not permit installation of crystal ovens without elimination of adjacent channel capabilities in addition to the installation costs of crystal ovens and oven type crystals.

c. Permitting frequency tolerances of 100 Hz will still permit understandable communications between mobile—mobile and mobile—land stations in the CAP network and will not interfere with other licensees.

4. The present amendment grants the petitioners' request without affecting users of the adjacent radio spectrum since CAP stations operate a closed system using government frequencies and where any adverse consequences from this action would only affect CAP stations and no other users for whom the Commission has regulating responsibility. We do not believe that the public interest would be served by denying the applicant's request for rule changes in this instance in view of CAP's contribution during emergency and search and rescue missions.

5. The amendment proposed herein pertains to the use of government frequencies used only by the petitioner or the government agencies to which the frequencies are assigned. Since users of other frequencies are not affected, proposed rule making and effective date procedures would serve no purpose and are not required pursuant to 5 U.S.C. section 553.

6. In view of the foregoing, *It is ordered*, That pursuant to the authority contained in section 4(i) and 303(r) of the Communications Act of 1934, as amended, Part 87 of the Commission's rules is amended, effective April 23, 1974, as set forth below.

Adopted: April 9, 1974.

Released: April 16, 1974.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082 (47 U.S.C. 154, 303.))

FEDERAL COMMUNICATIONS
COMMISSION,

[SEAL] VINCENT J. MULLINS,
Secretary.

Part 87 of 47 CFR Chapter I is amended as follows:

1. Section 87.65(c) is amended to read as follows:

§ 87.65 Frequency stability.

(c) When transmitting single sideband emission, the carrier frequency shall be maintained within the applicable following number of cycles per second of the specified carrier frequency:

(1) For other than Civil Air Patrol Stations:

	Hertz
(i) All ground stations.....	10
(ii) All aircraft stations.....	20

(2) For Civil Air Patrol Stations:

	Hertz
(i) All land stations.....	50
(ii) All mobile stations.....	150

¹ Mobile CAP stations, either on aircraft or in vehicles, authorized prior to January 1, 1978, with equipment having a frequency stability of 100 Hz, may continue to use such equipment until January 1, 1983.

[FR Doc. 74-9169 Filed 4-19-74; 8:45 am]

Title 49—Transportation

CHAPTER V—NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Docket No. 69-19; Notice 8]

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

Rectangular Headlamp Provision; Denial of Petitions for Reconsideration

This notice denies petitions for reconsideration of an amendment to Motor Vehicle Safety Standard No. 108 that permits use of rectangular headlamps.

On November 30, 1973 the NHTSA published in the FEDERAL REGISTER (38 FR 33084) a notice amending 49 CFR 571.108, Motor Vehicle Safety Standard No. 108, to permit the installation of headlamps with rectangular lenses on motor vehicles manufactured from January 1, 1974 through August 31, 1976. The Notice stated that the amendment represented this agency's interim position on rectangular headlamps, that a decision would be announced late in 1975 whether, as of September 1, 1976, to allow their continued use either with the dimensions specified or with different ones, or to revoke the option. Thereafter, pursuant to 49 CFR 553.35, petitions for reconsideration of the amendment were received from General Electric Company (GE), General Motors Corporation (GM) and Chrysler Corporation. This notice discusses the issues raised and their resolution.

The three petitioners principally objected to the establishment of a limited period of time beyond which the future of rectangular headlamps is uncertain. GE said that it is impossible "to commit to a substantial design and tooling investment with any certainty that such an investment might not be made obsolete in two years." Chrysler attacked the time limitation on two grounds: that it does not meet the need for motor vehicle safety, and that the shortness of the period effectively prohibits Chrysler from using the option. GM argued that a regulation that does not allow "due process" to affected persons prior to its revocation is outside the authority of the Traffic Safety Act.

GE criticized the amendment on other grounds as well. Noting NHTSA's concern "whether the rectangular headlamps will encounter more service difficulties than conventional ones," GE suggested that the option should not be allowed until the system has been proven reliable under controlled conditions off the public roads. If difficulties occur, GE

speculated that replacements might not be available through normal supply channels. GE's final criticism was that NHTSA is "diverging from the ultimate improved headlighting objectives of Docket No. 69-19; Notice 3 by permitting a proliferation of types manufactured to the present photometric standards rather than the proposed improved future standards." Chrysler petitioned that the time limit be removed, GM that the termination date be made the subject of a rulemaking notice, and GE that the amendment be rescinded.

These petitions have received careful consideration. In deciding to allow rectangular headlamps on an optional basis, the agency found no compelling reason either to require their use or to forbid them. No evidence was adduced that such lamps are superior in performance or life to conventional ones with circular lenses, or on the other hand that there are factors in rectangular headlamps which may make such lamps prone to disabilities in service. Since the safety performance of rectangular headlamps appeared equivalent to that of conventional ones, the NHTSA's next concern was whether an undue proliferation of headlamps would result if rectangular lamps were allowed. The NHTSA decided to minimize this factor by allowing only one size of rectangular headlamps. Given the widespread parts distribution network that exists today, the NHTSA found that replacement facilities for these lamps would be adequate. That network is far more developed than in 1940 when the industry adopted a single headlamp diameter size of 7 inches, or even in 1957 when two additional lamp types of 5¼-inch diameter became permissible. The agency finds that these considerations answer GE's objections that field evaluation will be to the public detriment and that an undue proliferation of headlamp types will result.

The purpose of the time limit is to provide an interim period in which rectangular headlamps can be judged on their merits, and in which a world-wide consensus can be obtained as to a single set of dimensions for them. A rulemaking action which has as its goals the evaluation of a safety-related vehicle system within a specified time interval meets the need for motor vehicle safety. While it is true that the option termination date was not included in the NPRM (Notice 5), the NHTSA finds that adequate safeguards have been provided by the announcement in Notice 7 that it will make a final decision late in 1975 on the subject. If the decision is to terminate the option, that decision will be the subject of a rulemaking action, and an opportunity afforded for comment. An important consideration is the possibility that on September 1, 1976, a different set of dimensions may become effective. The time limit is designed to facilitate planning, by placing the industry on notice of the interval within which the NHTSA will act on the issue. The NHTSA deemed this course of action preferable to an open-ended amendment. Notice 7 does

not foreclose manufacturers from petitioning for an extension of the August 31, 1976, date before NHTSA has reached its decision late in 1975.

The NHTSA finds the arguments concerning competitive advantage to be without merit. GM was the only manufacturer to approach the agency with a concrete proposal, detailed specifications, and formulated plans to incorporate headlamps different from those required in Standard No. 108. Given the leadtimes normally cited by manufacturers to make changes in their car bodies, it seems clear that no major manufacturer other than GM could incorporate a headlamp design change for the 1975 model year. At the end of 1975 the NHTSA plans to make its decision on the "permanent" headlamp systems. The allowing of the GM-proposed rectangular system is thus an interim measure for the period before other manufacturers would be introducing other different systems. The NHTSA has committed itself to make a fresh decision concerning the ultimate systems to be allowed, taking into account any world industry consensus that develops. It considers the current decision to be the best balance of interests of safety, consumer choice, manufacturer experimentation and testing of market reaction, maintenance of replacement supplies, and orderly and effective regulation.

Finally, GM petitioned for reconsideration of certain language changes on Figure 2. In the NPRM the third headlamp terminal was identified as "Upper Beam for Type 2A & 3A. Unused terminal or boss for other headlamp types." In the amendment this language was changed to "Type 2A upper beam. No connection or terminal for Type 1A headlamp." GM indicated a desire to use the third terminal to incorporate daytime running lights, and argued that such lights are permissible under Standard No. 108 since they do not impair the effectiveness of the required equipment.

On the basis of the information submitted, GM's petition is denied. The daytime running lights envisioned by the petition would be incorporated into the vehicle's primary headlighting system. In this configuration, if photometric output of the running lights (unspecified by the petition) approached that of the headlighting system, a driver might be induced at times of reduced visibility to rely upon the illumination the running lights provide. At such critical times, however, the system would provide no illumination at the rear, unless the vehicle were wired so that the tail lamps were illuminated whenever the running lights were activated. Driving without rear lights under conditions of reduced visibility can be very hazardous. In the absence of a more complete description of the system suggested by GM, the NHTSA has tentatively concluded that it would impair the effectiveness of the

required lighting equipment, and that Standard 108 prohibits the third terminal on Type 1A headlamps from being used as a connection for daytime running lights.

For the above reasons, petitions for reconsideration of Notice 7 are denied on all issues.

(Secs. 103, 119, Pub. L. 89-563, 80 Stat. 718, 15 U.S.C. 1392, 1407; delegation of authority at 49 CFR 1.51.)

Issued on April 16, 1974.

JAMES B. GREGORY,
Administrator.

[FR Doc.74-9146 Filed 4-19-74;8:45 am]

[Docket No. 73-22; Notice 1]

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

Passenger Car Tire and Rim Tables; Correction

In FR Doc. 73-20583, appearing at page 30234 in the issue of Thursday, November 1, 1973, make the following corrections to Appendix A of § 571.109:

1. In Table I-C appearing on page 30236, the test rim width for the 165-15 tire size designation is corrected to read, "4½".

2. In Table I-D appearing on page 30237, the test rim width for the 145-10 tire size designation is corrected to read "4½", the minimum size factor for the 230-15 tire size designation is corrected to read "37.30", and the test rim width for the 165-400 tire size designation is corrected to read "4.65".

3. In Table I-H, appearing on page 30239, the load values at the specified inflation pressures for the tire size designations listed below are corrected to read as follows:

Tire size designation	34 lb/in ²	36 lb/in ²	38 lb/in ²	40 lb/in ²
185 R 13		1360		
195 R 13				1650
165 R 14	1160			1270
175 R 14	1270	1310		1390
185 R 14	1400		1490	
195 R 14	1550	1600	1650	
205 R 14	1670			
215 R 14				2000
225 R 14		1990	2050	
165 R 15				1270
175 R 15	1270			1390
185 R 15	1440		1530	
215 R 15			1920	
235 R 15	2030	2100	2160	

4. In Table I-N, appearing at page 30241, for the 175/70 R 15 tire size designation, the maximum tire load at 16 psi is added to read "890" and the maximum tire load at 18 psi is added to read "915".

(Secs. 103, 119, 201, and 202, Pub. L. 89-563, 80 Stat. 718, 15 U.S.C. 1392, 1407, 1421, and 1422; delegations of authority at 49 CFR 1.51 and 501.8)

Issued on April 16, 1974.

ROBERT L. CARTER,
Associate Administrator,
Motor Vehicle Programs.

[FR Doc.74-9145 Filed 4-19-74;8:45 am]

Title 6—Economic Stabilization
CHAPTER I—COST OF LIVING COUNCIL
PART 150—PHASE IV PRICE REGULATIONS

PART 152—PHASE IV PAY REGULATIONS

Further Price and Pay Exemptions

The purpose of these amendments is to provide for additional price exemptions under the Economic Stabilization Program and to add generally parallel exemptions under the Phase IV pay regulations.

On April 1, 1974, the Council issued regulations which restated the scope of then current price and pay controls by enumerating those industries that remained covered. At that time, the Council also decontrolled sectors in which serious inflationary pressures were not present or in which it was not deemed necessary to seek post-exemption price or supply commitments.

Since the exemption action of April 1, 1974, the Council has exempted the wholesale and retail food industries, and has now concluded that further exemptions are appropriate.

Unless otherwise indicated the exemption applies to prices and wages at the manufacturing level for the following sectors:

SIC Group or Industry No. (1972 ed.):

- | | Description |
|-------|--|
| 2076 | Linseed oil, cake, and meal only; prices only—wages previously exempted. |
| 22 | Textile Mill Products (includes 2295 which was previously decontrolled). |
| 284 | Soap, Detergents, and Cleaning Preparations, Perfumes, Cosmetics, and Other Toilet Preparations (includes 2843 which was previously decontrolled). |
| 321 | Flat Glass. |
| 322 | Glass and Glassware, Pressed or Blown. |
| 323 | Glass Products, Made of Purchased Glass. |
| 325 | Structural Clay Products. |
| 3271 | Concrete Block and Brick. |
| 3272 | Concrete Products, Except Block & Brick. |
| 3274 | Lime. |
| 3275 | Gypsum Products. |
| 3312 | Coke produced by establishments covered by SIC Industry No. 3312 (Blast Furnaces (including Coke Ovens), Steel Works, and Rolling Mills); prices only. |
| 3411 | Metal Cans: (prices only; wages previously exempted). |
| 3412 | Metal Shipping Barrels, Drums, Kegs and Pails: (prices only; wages previously exempted). |
| 3493 | Steel Springs, Except Wire. |
| 3495 | Wire Springs. |
| 422 | Public Warehousing: (prices only). |
| 423 | Terminal and Joint Terminal Maintenance Facilities for Motor Freight Transportation: (prices only). |
| 50/51 | Wholesale Trade—all wholesale trade related to the above items: (prices only—wages previously exempted). |

Studies done by the Council indicate that the economic impact of these exemptions should be minor. Phase IV coverage of items in the Consumer Price Index remains unchanged at 12.2 percent. Phase IV coverage of items in the

Wholesale Price Index is reduced by this action from 37.4 to 31.5 percent. Coverage of the labor force is reduced by only 1.2 percent to 24.1 percent.

Under §§ 150.11(e) and 150.161(b), a firm with revenues from the sale of exempt items remains subject to the profit margin constraints and reporting provisions of the Phase IV program unless during its most recent fiscal year it derived both less than \$50 million in annual sales or revenues from the sale or lease of nonexempt items and 90% or more of its sales and revenues from the sale of exempt items or exempt sales.

As a complementary action to the exemptions from price controls, the Council has also exempted pay adjustments affecting employees engaged on a regular and continuing basis in the operation of establishments in specifically enumerated SIC Manual Classifications. Exemption is extended to establishments in Major Group No. 22; Groups No. 284, 321, 322, 323, and 325; and Industry Nos. 3493 and 3495. Exemption is also extended to establishments under Group No. 327, except for establishments under Industry No. 3273. These exemptions are effected by revisions to §§ 152.163 and 152.167, and are subject to the limitations set forth in § 152.168. Thus, for example, employees who are members of executive control groups are not exempted. These pay exemptions are applicable to pay adjustments with respect to work performed on and after April 18, 1974. In cases of uncertainty of application, inquiries concerning the scope of coverage of the pay exemption should be addressed to the Administrator, Office of Wage Stabilization, P.O. Box 672, Washington, D.C. 20044.

As with all exemptions from Phase IV controls, firms exempted by these amendments remain subject to review for compliance with appropriate regulations in effect prior to these exemptions. A firm exempted by these amendments will be held responsible for its pre-exemption compliance under all phases of the Economic Stabilization Program. A firm affected by these exemptions alleged to be in violation of stabilization rules in effect prior to this exemption is subject to the same compliance actions as a non-exempt firm. These compliance actions include investigations, issuance of notices of probable violation, issuance of remedial orders requiring rollbacks or refunds, and possible penalty of \$2,500 for each stabilization violation.

The Council retains the authority to reestablish price and wage controls over any of the industries exempted by these amendments if price or wage behavior is inconsistent with the policies of the Economic Stabilization Program. The Council also has the authority, under §§ 150.162 and 152.6, to require firms to file special or separate reports setting forth information relating to the Economic Stabilization Program in addition to any other reports which may be required under the Phase IV controls program.

Because the purpose of these amendments is to provide immediate guidance

with respect to decisions of the Council, the Council finds that publication in accordance with normal rulemaking procedure is impracticable and that good cause exists for making these amendments effective in less than 30 days. Interested persons may submit written comments regarding this amendment. Communications should be addressed to the Office of the General Counsel, Cost of Living Council, 2000 M Street NW., Washington, D.C. 20508.

(Economic Stabilization Act of 1970, as amended, Pub. L. 92-210, 85 Stat. 743; Pub. L. 93-28, 87 Stat. 27; E.O. 11695, 38 FR 1743; E.O. 11730, 38 FR 19345; Cost of Living Council Order No. 14, 38 FR 1489.)

In consideration of the foregoing, Parts 150 and 152 of Title 6 of the Code of Federal Regulations are amended as set forth herein, effective April 18, 1974.

Issued in Washington, D.C., on April 18, 1974.

JAMES W. McLANE,
Deputy Director,
Cost of Living Council.

§ 150.59 [Amended]

1. Section 150.59(b)(1)(ii)(E) is amended to read as follows:

(E) The prices which firms primarily engaged in manufacturing charge for the following products which they manufacture: products listed in the SIC Manual, 1972 edition, under Industry No. 2033 (except jam, jellies, marmalade, and preserves); and linseed oil, cake, and meal listed under Industry No. 2076.

2. Section 150.59 is further amended by deleting from the list in paragraph (b)(7) the following items: "Major Group 22 (Textile Mill Products), except Industry No. 2295 (Coated Fabrics, Not Rubberized)"; "Group No. 284 (Soap, Detergents, and Cleaning Preparations, Perfumes, Cosmetics, and Other Toilet Preparations), except Industry No. 2843 (Surface Active Agents, Finishing Agents, Sulfonated Oils and Assistants)"; "Group No. 321 (Flat Glass)"; "Group No. 322 (Glass and Glassware, Pressed or Blown)"; "Group No. 323 (Glass Products, Made of Purchased Glass)"; and "Group No. 325 (Structural Clay Products)".

3. Section 150.59(b)(7) is further amended by deleting reference to "Group No. 327 (Concrete Gypsum, and Plaster Products)" and substituting "Industry No. 3273 (Ready-Mixed Concrete)".

4. Section 150.59(b)(9)(i) is amended to read as follows:

(i) *Steel.* The prices which a manufacturer of the following products charges for those products if it derives in total \$50 million or more in annual sales or revenues from the manufacture and sale of those products: the products listed in the SIC Manual, 1972 edition, under Group No. 331 (Blast Furnaces, Steel Works, and Rolling and Finishing Mills), except coke as described in Industry No. 3312 and ferroalloys.

5. Section 150.59 is further amended by deleting from the list in paragraph (b)(9)(ii)(A) the item, "3411 (Metal Cans)".

6. Section 150.59 is further amended by deleting from the list in paragraph (b)(9)(ii)(B) the following items: "3412 (Metal Shipping Barrels, Drums, Kegs, and Pails)", "3493 (Steel Springs, Except Wire)", and "3495 (Wire Springs)".

7. Section 150.59 is further amended by deleting paragraph (b)(13) in its entirety.

8. Section 152.163(b) is revised to read as follows:

§ 152.163 New exemptions in industries previously subject to self-administered controls.

(b) *Exemptions effective after April 1, 1974.* Pay adjustments affecting employees engaged on a regular and continuing basis in the operation of an establishment in an industry classified in the Standard Industrial Classification Manual, 1972 edition, under any of the following numbers, or in support of such operation, are exempt from and not limited by the provisions of this title on and after the effective date specified for such industry:

Industry No. 2711—Newspapers: Publishing, Publishing and Printing—(April 2, 1974).
Major Group No. 22—Textile Mill Products; except for Industry No. 2295 (Coated Fabrics, Not Rubberized)—(April 18, 1974).
Group No. 284—Soap, Detergents, and Cleaning Preparations, Perfumes, Cosmetics, and Other Toilet Preparations; except Industry No. 2843 (Surface Active Agents, Finishing Agents, Sulfonated Oils and Assistants)—(April 18, 1974).
Group No. 321—Flat Glass—(April 18, 1974).
Group No. 322—Glass and Glassware, Pressed or Blown—(April 18, 1974).
Group No. 323—Glass Products, Made of Purchased Glass—(April 18, 1974).
Group No. 325—Structural Clay Products—(April 18, 1974).
Group No. 327—Concrete, Gypsum, and Plaster Products; except for Industry No. 3273—Ready-Mixed Concrete—(April 18, 1974).
Industry No. 3493—Steel Springs, Except Wire—(April 18, 1974).
Industry No. 3495—Wire Springs—(April 18, 1974).

§ 152.167 [Amended]

9. Section 152.167 is amended by deleting the following items from the list in paragraph (b):

Major Group No. 22—Textile Mill Products, except for Industry No. 2295 (Coated Fabrics, Not Rubberized).
Group No. 284—Soap, Detergents and Cleaning Preparations, Perfumes, Cosmetics, and Other Toilet Preparations; except Industry No. 2843 (Surface Active Agents, Finishing Agents, Sulfonated Oils and Assistants).
Group No. 321—Flat Glass.
Group No. 322—Glass and Glassware, Pressed or Blown.
Group No. 323—Glass Products, Made of Purchased Glass.
Group No. 325—Structural Clay Products.
Industry No. 3493—Steel Springs, Except Wire.
Industry No. 3495—Wire Springs.

10. Section 152.167 is amended by deleting from the list in paragraph (b) the item "Group No. 327—Concrete, Gypsum, and Plaster Products," and inserting in its place the item "Industry No. 3273—Ready-Mixed Concrete."

[FR Doc.74-9262 Filed 4-18-74; 4:01 pm]

Proposed Rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rulemaking prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 927]

[Docket No AO-99-A3]

PEARS GROWN IN OREGON, WASHINGTON, AND CALIFORNIA

Beurre D'Anjou, Beurre Bosc, Winter Nelis, Doyenne du Comice, Beurre Easter, and Beurre Clairgeau Varieties; Recommended Decision and Opportunity To File Written Exceptions

Pursuant to the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders (7 CFR Part 900), notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to the proposed further amendment of the marketing agreement and order (7 CFR Part 927), hereinafter referred to collectively as the "order", regulating the handling of Beurre D'Anjou, Beurre Bosc, Winter Nelis, Doyenne du Comice, Beurre Easter, and Beurre Clairgeau varieties of pears grown in Oregon, Washington, and California. The order is effective pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "act", and any amendment which may result from this proceeding will also be effective pursuant to the act.

Interested persons may file written exceptions to this recommended decision with the Hearing Clerk, United States Department of Agriculture, Room 112, Administration Building, Washington, D.C. 20250, not later than the close of business May 7, 1974. Exceptions should be filed in quadruplicate. All such communications will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

Preliminary statement. The public hearing, on the record of which this proposed amendment of the order was formulated, was held in Portland, Oregon, on February 26, 1974, pursuant to a notice thereof which was published in the FEDERAL REGISTER on February 12, 1974 (39 FR 5320). The notice contained amendment proposals which had been submitted to the Secretary of Agriculture by the Control Committee (established pursuant to the marketing agreement and order).

Material issues. The material issues presented on the record were concerned with amending the order to:

(1) Revise the provisions which authorize marketing research and development projects to include authority for

production research related to market quality factors;

(2) Authorize the issuance of container regulations; and

(3) Make conforming changes.

Findings and conclusions. The findings and conclusions on the material issues, all of which are based on the evidence adduced at the hearing and the record thereof, are as follows:

(1) The order presently contains authority for committee expenditures on marketing research and development projects designed to assist, improve, or promote the marketing, distribution, and consumption of pears.

The order should be amended, as hereinafter set forth, to include authority for production research designed to assist, improve, or promote the marketing, distribution, and consumption of pears. The proposal to include production research, as published in the notice of hearing, indicated that the intent of the proposal was to provide for production research projects designed to assure "efficient production" in addition to those designed to assist, improve, or promote the marketing, distribution, and consumption of pears. However, the record evidence shows that the kind of production research for which authority is needed relates to problems affecting the marketing of the fruit. Such research would be concerned mainly with orchard practices and procedures aimed at maintaining or improving market quality in marketing channels.

For several years, the committee has conducted marketing research projects aimed at maintaining or improving the market quality of pears so as to promote their marketing, distribution, and consumption. During such time, it has become obvious to those concerned that several quality lowering factors, or the susceptibility thereto, may originate in the production phase of operations. Thus far, the order has limited the committee's research to activities which take place beyond the farm gate such as sorting, packing, storage, and distribution of pears. Specific examples of quality problems that are believed to originate during production are cork spot, scald, shrivel, and decay. Other examples of production technology which may affect market quality include harvesting practices and the use of growth regulators, fertilizers, insecticides, and similar materials. In addition, new laws and regulations enacted for the protection of consumers and the environment may require research involving industry-wide cooperation to ascertain how best to conduct operations that will result in pears which comply with such regulations. The rec-

ommended authority would permit expansion of committee research activities to include areas of practice and procedure at the orchard level which affect the marketing, distribution, and consumption of pears to the end that more effective marketing may be achieved. Likewise, such authority would enable the committee to participate in the development of practices and procedures to meet the requirement of rules and regulations that are directed toward consumer and environmental protection, and have an impact on the production and distribution of pears.

The act provides that the expense of any research projects are to be paid from funds collected under the order. Therefore, for clarity the order should so specify as hereinafter set forth.

In formulating production research projects the committee should be authorized to secure the advice and service of persons knowledgeable in any segment of the research field. The committee should be authorized to establish subcommittees to assist it in the efficient and expeditious planning of production research projects or programs. Such committees could explore research methods, develop preliminary projects and programs, and make recommendations with respect to any such activities. Subcommittees could also perform evaluations of activities at any stage of completion. Final decisions on any such recommendation would be the prerogative of the committee subject to approval of the Secretary. In the conduct of any production research projects, the committee should be authorized to conduct the projects, or to contract for the conduct of such projects with persons or organizations that specialize in this field of activity.

In submitting projects to the Secretary for his approval, the committee should include recommendations as to the funds to be obtained from assessments under the order and its appraisal of the relative urgency of individual projects whenever several possibilities are involved. The committee should fully consider the cost of any such activities, when developing its budget, both as to additional items of expense and the applicable assessment rate. Committee expenditures for the costs of planning such research should be authorized on the basis of budgetary approval since planning and project development necessarily precede recommendation of a project to the Secretary for his approval. The committee should review its production research program annually to appraise its effectiveness. Copies of the annual report on the program should be provided

to the Secretary and made available at the committee office for examination by producers, handlers, and other interested persons.

(2) The notice of hearing contained a proposal that the regulatory provisions of the order be amended to authorize the issuance of regulations that would fix the size, capacity, weight, dimensions, or pack of the container, or containers, which may be used in the packaging or handling of pears. The proponents of this proposal abandoned it at the hearing, and no evidence either in support or in opposition to it was presented. It is therefore concluded that the order should not be amended, at this time, to include authority for regulating containers of pears.

(3) No conforming changes are necessary.

Ruling on proposed findings and conclusions. March 22, 1974, was fixed as the latest date for the filing of briefs with respect to the facts presented in evidence at the hearing and on the findings and conclusions that should be drawn therefrom. No brief was filed.

General findings.

(1) The said order, as amended, and as hereby proposed to be further amended, and all the terms and conditions thereof, will tend to effectuate the declared policy of the act;

(2) The said order, as amended, and as hereby proposed to be further amended, regulates the handling of Beurre D'Anjou, Beurre Bosc, Winter Nelis, Doyenne du Comice, Beurre Easter, and Beurre Clarigean varieties of pears grown in the States of Oregon, Washington, and California in the same manner as, and is applicable only to persons in the respective classes of commercial or industrial activity specified in, a proposed marketing agreement upon which hearings have been held;

(3) The said order, as amended, and as hereby proposed to be further amended, is limited in application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the act; and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the act; and

(4) The said order, as amended, and as hereby proposed to be further amended, prescribes such different terms, applicable to different production and marketing areas, as are necessary to give due recognition to differences in the production and marketing of such pears.

Recommended amendment of the marketing agreement and order. The following amendment of the marketing agreement and order, as amended, is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out:

Revised § 927.47 to read:

§ 927.47 **Research and development.**

The Control Committee, with the approval of the Secretary, may establish

or provide for the establishment of production research or marketing research and development projects designed to assist, improve, or promote the marketing, distribution, and consumption of pears. The expense of such projects shall be paid from funds collected pursuant to § 927.41.

Dated: April 17, 1974.

E. L. PETERSON,
Administrator,

Agricultural Marketing Service.

[FR Doc.74-9151 Filed 4-19-74;8:45 am]

[7 CFR Part 1065]

[Docket No. AO 86-A32]

MILK IN THE NEBRASKA-WESTERN IOWA MARKETING AREA

Hearing on Proposed Amendments to Tentative Marketing Agreement and Order

This notice is supplemental to the notice of hearing that was issued on April 8, 1974, and published in the FEDERAL REGISTER on April 11, 1974 (39 FR 13162).

Notice is hereby given, pursuant to the rules of practice applicable to such proceedings (7 CFR Part 900), that the aforesaid hearing is rescheduled to be held at the Hilton Hotel, 1616 Dodge Street, Omaha, Nebraska, beginning at 9:30 a.m., May 13, 1974, with respect to proposed amendments previously announced and additional proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Nebraska-Western Iowa marketing area.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions which relate to the previously announced proposed amendments, and to the additional proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreement and to the order.

The proposed amendments, including those previously announced and those set forth below, have not received the approval of the Secretary of Agriculture.

PROPOSED BY ROBERTS DAIRY COMPANY

PROPOSAL NO. 5

Consolidate Zone 1 and Zone 2 into a single pricing zone and apply the present Zone 1 Class I price differential to the consolidated area.

PROPOSAL NO. 6

Revise the defined areas of Zones 1 and 3 to remove Hall County, Nebraska, from Zone 3 and include the county as part of Zone 1.

PROPOSED BY FAIRMONT FOODS COMPANY

PROPOSAL NO. 7

Consolidate Zones 1, 2 and 3 into a single pricing zone and apply the present Zone 1 Class I price (basic formula price plus \$1.60) to the consolidated area.

Copies of this supplemental notice of hearing and the notice of hearing issued April 8, 1974, and of the order, may be procured from the Market Administrator, U. Grant Grayson, P.O. Box 4606, Overland Park, Kansas 66204, or from the Hearing Clerk, Room 112-A, Administration Building, United States Department of Agriculture, Washington, D.C. 20250 or may be there inspected.

Signed at Washington, D.C., on April 17, 1974.

E. L. PETERSON,
Administrator,

Agricultural Marketing Service.

[FR Doc.74-9159 Filed 4-19-74;8:45 am]

Farmers Home Administration

[7 CFR Part 1804]

[FHA Instruction 424.5]

PLANNING AND PERFORMING SITE DEVELOPMENT WORK

Amended Guidelines

Notice is hereby given that the Farmers Home Administration has under consideration the proposed amendment of § 1804.64 (a) and (b) and § 1804.67(a) (1) of Subpart D of 7 CFR Part 1804, "Planning and Performing Development Work" (38 FR 4500). The proposed amendment provides new guidelines for the County Supervisor and for the services of landscape architects, provides for notification to the County Office of substantial conformance with the approved plans and specifications, and also clarifies access requirements for new subdivisions.

Interested persons are invited to submit written comments, suggestions, or objections regarding the proposed amendments to the Deputy Administrator Comptroller, Farmers Home Administration, U.S. Department of Agriculture, Room 5007, South Building, Washington, D.C. 20250, on or before May 22, 1974.

All written submissions made pursuant to this notice will be made available for public inspection at the Office of the Deputy Administrator Comptroller during regular business hours (8:15 a.m. to 4:45 p.m.).

1. Amend § 1804.64 as follows:

§ 1804.64 **Planning development.**

(a) *FHA advice and assistance.* On subdivisions which will have 5 or more building sites in the foreseeable future, builder-developers shall be encouraged to seek the advice and assistance of the FHA before significant expenditures are made. When a County Supervisor receives an inquiry about housing financing in a proposed, new or existing subdivision of 5 or more sites, he will:

• • • • •

(b) *Technical services.* * * *

(1) The builder-developer proposing a new subdivision which will have 10 or more dwelling sites will secure the services of a site planner, architect, landscape architect, or engineer, registered or otherwise certified as qualified in the state in which the subdivision is to be constructed, to provide complete planning, drawings, specifications, and supervision on land, street, utility and grading development.

(2) Complete technical services will be obtained and paid for by the builder-developer with his own funds.

(3) At completion of construction (or when construction will be accomplished in phases, at the end of each phase), the person who is qualified and registered or certified in the state in which the subdivision is to be constructed and is providing supervisory services during the period of work shall notify the FHA County Office in writing that all work has been completed in substantial conformance with the approved plans and specifications.

2. Amend § 1804.67 as follows:

§ 1804.67 Streets.

(a) New subdivisions and expansion of existing subdivisions.

(1) Streets must conform to master street plans, design standards and construction specifications of the applicable public body, city, town, county or state and the requirements of the FHA. Developments with more than 20 sites shall have two accesses available, unless an exception is granted by the State Director.

(42 U.S.C. 1480's; delegation of authority by Sec. of Agri., 38 FR 14944, 14948, 7 CFR 2.23; delegation of authority by the Asst. Sec. for Rural Development, 38 FR 14944, 14952, 7 CFR 2.70).

Dated: April 15, 1974.

FRANK B. ELLIOTT,
Administrator,

Farmers Home Administration.

[FD Doc.74-9152 Filed 4-19-74;8:45 am]

DEPARTMENT OF HEALTH,
EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Parts 310 and 700]

VINYL CHLORIDE AS AN INGREDIENT OF
DRUG AND COSMETIC AEROSOL PRO-
DUCTS

Notice of Proposed Rule Making

In the FEDERAL REGISTER of May 17, 1973 (38 FR 12931), the Commissioner of Food and Drugs published a notice of proposed rulemaking for prior-sanctioned polyvinyl chloride (PVC) resin. Polyvinyl chloride is a polymeric resin produced by polymerization of vinyl chloride which was used as a component of food packaging materials prior to the passage of the Food Additive Amendments of 1958 and which has been widely

used since that time. Only certain formulations of PVC, however, are prior-sanctioned for use in food packaging and therefore are exempt from classification as food additives and may be used without pre-marketing clearance by the Food and Drug Administration.

Early in 1973, the Food and Drug Administration began receiving reports of possible migration problems of ingredients of PVC bottles then being test marketed for distilled spirits. As a result of further analytical testing, the Commissioner published the May 17, 1973 proposal wherein he concluded that the use of PVC for the packaging of alcoholic foods may cause such foods to be adulterated. No PVC bottles have been used for such purposes since then. After the publication of the proposal, the Commissioner began investigating scientific reports regarding the possible migration of PVC container ingredients to nonalcoholic foods as well. Agency action on this matter and on the earlier proposal is expected to be published shortly in the FEDERAL REGISTER. The Commissioner is also considering the applicability of this information to various drug products packaged in PVC, and to various devices composed in whole or in part of PVC which may come in contact with drug fluids, or which may be inserted or implanted in the human body.

Because of the broad interest in the subject of vinyl chloride by both the public and the scientific community because of its potential as a serious threat to the public health, the Commissioner has undertaken an agency-wide effort to explore the problem in connection with those products within the jurisdiction of the Food and Drug Administration and to fashion the appropriate regulatory actions that should be taken to assure full protection of the public health. Representatives of this agency are also members of a Federal inter-agency task force formed to gather data on the overall effect of vinyl chloride on the total environment and to initiate coordinated action to minimize this impact.

In connection with this search for information, the Commissioner is particularly interested in receiving data in response to the following points relating to the use of polyvinyl chloride in containers for food and cosmetics, and in devices:

(1) The extent of usage of polyvinyl chloride by type of container or container liner and type of product.

(2) The vinyl chloride content in polyvinyl chloride used to manufacture or line various food and cosmetic containers, including description of the methods and extraction systems used to determine this content.

(3) The rate and level of vinyl chloride extraction from the aforementioned containers or their liners by various foods and cosmetics, including data derived after periods of storage.

(4) The rate and level of percutaneous absorption of vinyl chloride from cosmetics and devices when in contact with the skin or mucous membrane.

(5) The vinyl chloride content of vari-

ous drug fluids after they have been in contact with devices composed in whole or in part of polyvinyl chloride.

(6) The effect on blood and tissues of vinyl chloride extracted from devices composed in whole or in part of polyvinyl chloride inserted or implanted in the body.

All persons in possession of such data are urgently requested to submit it to the Food and Drug Administration in writing (preferably in quintuplicate), if at all possible on or before June 21, 1974. This data should be sent to the Hearing Clerk, Food and Drug Administration, Room 6-86, 5600 Fishers Lane, Rockville, MD 20852. Received data may be seen in the above office during working hours, Monday through Friday.

The Commissioner recently received a petition from the Health Research Group, 2000 P Street NW., Washington, D.C. 20036, proposing to prohibit immediately the continued use of vinyl chloride as a constituent or propellant of cosmetic aerosol products and of polyvinyl chloride as a container material for any cosmetic product which can leach out detectable amounts of vinyl chloride from the polyvinyl chloride container material. The petitioner contends that there is substantial evidence that vinyl chloride monomer is carcinogenic.

A copy of the petition and letter of transmittal to the Commissioner are on file in the Office of the Hearing Clerk.

The Commissioner has reviewed all cosmetic product ingredient statements on file with the agency, representing approximately 50 percent of current market formulations, as of February 1, 1974, and has ascertained that no information exists in these files indicating use of vinyl chloride in cosmetic aerosol products. Furthermore, the Cosmetic, Toiletry and Fragrance Association, Inc. (CTFA), has informed the Food and Drug Administration that the results of a recent telephone poll, covering 26 companies including the major aerosol hair spray manufacturers, show that no company contacted has manufactured products containing vinyl chloride since June 1973. In 1973, according to this information, two companies produced vinyl chloride-containing products with a total volume of approximately 1,625,000 units. The CTFA estimates that the percentage of hair spray cans manufactured in 1973 which contained vinyl chloride is less than 0.4 percent. A copy of the information received from the CTFA is on file in the Office of the Hearing Clerk.

There is no known past or present usage of vinyl chloride as a propellant in food aerosol products. Any such use without a food additive regulation would be a violation of the Federal Food, Drug, and Cosmetic Act.

With regard to drug products, the Food and Drug Administration has recently reviewed its files and conducted a survey of all known drug manufacturers of aerosol products to determine the extent to which vinyl chloride is used as a component, including propellant, in such products. The only known use of vinyl chloride in drug products has been as a

propellant in aerosol preparations. While all the information requested in the survey was not supplied by manufacturers, the review of the agency files and preliminary results of the survey indicate that vinyl chloride is not currently being used in aerosol drug products. There are no approved new drug applications for vinyl chloride as a component of any drug. There is evidence, however, that manufacturers of some over-the-counter drug products used vinyl chloride as a propellant until 1973.

To determine the full extent that vinyl chloride is used in drug products and to determine if any additional action is needed to protect the public, there is published elsewhere in this issue of the FEDERAL REGISTER, a notice, pursuant to § 132.7(a)(4) (21 CFR 132.7(a)(4)), of the regulations under the Drug Listing Act of 1972, requiring all registrants to submit a list of all drug products marketed containing the ingredient vinyl chloride or packaged in containers composed of or lined with polyvinyl chloride.

The Commissioner has determined that there are sufficient scientific data on which to base a decision that: (1) vinyl chloride presents an unnecessary hazard to the public health when it is used as an ingredient in cosmetic aerosol products and that such use should be banned, and (2) vinyl chloride, when used as an ingredient in drug aerosol products, is not generally recognized as safe and effective, is a new drug within the meaning of section 201(p) of the Federal Food, Drug and Cosmetic Act, and requires an approved new drug application as a condition of marketing.

There is ample evidence that vinyl chloride inhalation can result in acute toxicity manifested by an array of symptoms, including unconsciousness as a result of high concentration of inhalation. Cardiac effects, bone changes, and degenerative changes in the brain, liver, and kidneys have also been reported in animals. Reported studies also demonstrate carcinogenic effects in animals as a result of inhalation exposure to vinyl chloride. Of most significance, however, is the fact that vinyl chloride has been linked to liver disease, including liver cancer, in workers engaged in the polymerization of vinyl chloride to PVC. The scientific articles providing this evidence are on file in the Office of the Hearing Clerk. In view of this evidence, the Commissioner concludes that the banning of vinyl chloride as an ingredient in drug and cosmetic aerosol products is required. These products are often used in the confines of a small room where the level of vinyl chloride to which the individual may be exposed, although usually only for a short time, could be significantly in excess of the safe level established in connection with occupational exposure.

As a corollary to this conclusion, the Commissioner has requested all known manufacturers of such products with supplies still on the market to recall these supplies from the market to the retail level, and similar requests will be

made of any additional such manufacturers if and as they are located.

Two cosmetic aerosol hair spray manufacturers commenced such recalls as of April 2, 1974 and a drug and cosmetic manufacturer, identified after a file search, began recall of seven drug and three cosmetic aerosol products as of April 8, 1974, following an April 4, 1974 request.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 502, 505, 601(a), 701(a); 52 Stat. 1050-1055, as amended; 21 U.S.C. 352, 355, 361(a), 371(a)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 2.120), it is proposed that Parts 310 and 700 be amended as follows:

1. By adding a new § 310.506 to Subpart E of Part 310 to read as follows:

§ 310.506 Use of vinyl chloride as an ingredient, including propellant, of aerosol drug products.

(a) Vinyl chloride has been used as a propellant in aerosol drug preparations. Evidence indicates that vinyl chloride inhalation can result in acute toxicity manifested by dizziness, headache, disorientation, and unconsciousness when inhaled at high concentrations. Cardiac effects, bone changes, and degenerative changes in the brain, liver, and kidneys have been reported in animals. Studies also demonstrate carcinogenic effects in animals as a result of inhalation exposure to vinyl chloride. Recently, vinyl chloride has been linked to liver disease, including liver cancer, in workers engaged in the polymerization of vinyl chloride.

(b) The Commissioner finds that there is a lack of general recognition by qualified experts of the safety or effectiveness of aerosol drug preparations containing vinyl chloride as an ingredient, including propellant. Therefore, any such product containing vinyl chloride is a new drug and a new drug application approved under section 505 of the Federal Food, Drug, and Cosmetic Act is required for marketing.

(c) A completed and signed "Notice of Claimed Investigational Exemption for a New Drug" (Form FD-1571), as set forth in § 312.1 of this chapter, is required to cover clinical investigations designed to obtain evidence that such preparations are safe and effective for the purposes intended.

(d) Any such drug within the jurisdiction of the act which is not in accord with this regulation is subject to regulatory action.

2. By adding a new § 700.14 to Subpart B of Part 700 to read as follows:

§ 700.14 Use of vinyl chloride as an ingredient, including propellant of cosmetic aerosol products.

(a) Vinyl chloride has been used as an ingredient in cosmetic aerosol products including hair sprays. Where such aerosol products are used in the confines of a small room, as is often the case, the level of vinyl chloride to which the indi-

vidual may be exposed could be significantly in excess of the safe level established in connection with occupational exposure. Evidence indicates that vinyl chloride inhalation can result in acute toxicity manifested by dizziness, headache, disorientation, and unconsciousness when inhaled at high concentrations. Studies also demonstrate carcinogenic effects in animals as a result of inhalation exposure to vinyl chloride. Furthermore, vinyl chloride has recently been linked to liver disease, including liver cancer, in workers engaged in the polymerization of vinyl chloride. It is the view of the Commissioner that vinyl chloride is a deleterious substance which may render any cosmetic aerosol product that contains it as an ingredient injurious to users. Accordingly, any cosmetic aerosol product containing vinyl chloride as an ingredient is deemed to be adulterated under section 601(a) of the Federal Food, Drug, and Cosmetic Act.

(b) Any cosmetic aerosol product containing vinyl chloride as an ingredient shipped within the jurisdiction of the act is subject to regulatory action.

Interested persons may, on or before May 22, 1974, file with the Hearing Clerk, Food and Drug Administration, room 6-86, 5600 Fishers Lane, Rockville, MD 20852, written comments (preferably in quintuplicate) regarding this proposal. Comments may be accompanied by a memorandum or brief in support thereof. Received comments may be seen in the above office during working hours, Monday through Friday.

Dated: April 16, 1974.

A. M. SCHMIDT,
Commissioner of Food and Drugs.
[FR Doc.74-9222 Filed 4-19-74; 8:45 am]

**DEPARTMENT OF
TRANSPORTATION**

COAST GUARD

[33 CFR Part 117]

[CGD 74115]

**NEW RIVER SOUND AND STRANAHAN
RIVER, FLA.**

**Proposed Drawbridge Operation
Regulations**

At the request of the Florida Yacht Club Council, the Coast Guard is considering revoking the regulations for the East Las Olas Boulevard drawbridge across the Atlantic Intracoastal Waterway in Fort Lauderdale, Florida, to require that the draw open on signal. Present regulations allow closed periods from November 15 through May 15 from 7 a.m. to 6 p.m. during which the draw need only open on the hour and half hour. This change is being considered for the following reasons:

(a) The regulations presently in force were issued on March 15, 1950 (15 FR 1461), and were amended on July 2, 1953 (18 FR 3782), October 28, 1955 (20 FR 8118), and October 20, 1956 (21 FR 8084). These regulations were issued to ease ve-

hicular traffic problems caused by the low (6.8 feet vertical clearance), manually operated swingspan, which required openings for all but the smallest vessels. In October 1958 a new mechanically operated bascule bridge was opened, replacing the swingspan. This bridge provides 31 feet vertical clearance at the center and has reduced the opening requirements drastically.

(b) The initial regulation of March 15, 1950, stated in part, "The regulations in this section are intended to be in force pending the construction of a new bridge in the locality * * *." This bridge has now been constructed and the need for these regulations no longer exists.

(c) As a result of tidal water flows from approximately one hundred miles of canals, rivers and bays under the East Las Olas bridge, there is a constant safety hazard in passing through the relatively narrow horizontal clearance of 91 feet with fenders. Great care must be exercised at all times in navigating this channel to avoid accidents. Any undue delay to one or more vessels intensifies the hazard and increases the chance of accidents.

(d) Vessels which require more than the 31 feet of vertical clearance provided are generally large vessels that require considerable maneuvering room. This is not available to any degree on either side of the bridge.

(e) Available data for the past 15 years show no significant increase in vehicular traffic. The estimated traffic in 1958 was 15,000 vehicles daily. The latest figure available for April 18, 1973 showed 16,311 vehicles daily.

Under this proposal, paragraph (b) of this section would be revised to include the provisions of paragraph (c). Paragraph (c) would be deleted because its provisions would be applicable only to the bridge covered in paragraph (b) and would no longer be applicable to the bridge covered in paragraph (a).

Interested persons may participate in this proposed rulemaking by submitting written data, views, or arguments to the Commander, Seventh Coast Guard District (oan), Room 1018, Federal Building, 51 SW 1st Avenue, Miami, Florida 33130. Each person submitting comments should include his name and address, identify the bridge, and give reasons for any recommended change in the proposal. Copies of all written communications received will be available for examination by interested persons at the office of the Commander, Seventh Coast Guard District.

The Commander, Seventh Coast Guard District, will forward any comments received before May 20, 1974, with his recommendations to the Chief, Office of Marine Environment and Systems, who will evaluate all communications received and take final action on this proposal. The proposed regulations may be changed in the light of comments received.

In consideration of the foregoing, it is proposed that 33 CFR Part 117 be amended by revising § 117.446 to read as follows:

§ 117.446 New River Sound and Stranahan River (Intracoastal Waterway), Fort Lauderdale, Fla., bridges.

(a) East Las Olas Boulevard Bridge across New River Sound. The draw shall open promptly on signal.

(b) Sunrise Boulevard Bridge across New River Sound.

(1) From November 15 through May 15 the draw need not open from 7:15 a.m. to 6:15 p.m. except on the quarter hour and three quarters hour. At all other times the draw shall open on signal.

(2) Public vessels of the United States, tugs with tows and vessels in distress shall be passed at any time upon a signal of four short blasts of a whistle, horn or by shouting.

(c) [Deleted]

(Sec. 5, 28 Stat. 362, as amended, sec 6(g) (2), 80 Stat. 937; 33 U.S.C. 499, 49 U.S.C. 1655(g) (2); 49 CFR 1.46(c) (5), 33 CFR 1.05-1(c) (4))

Dated: April 15, 1974.

R. I. PRICE,
Captain, U.S. Coast Guard,
Acting Chief, Office of Marine
Environment and Systems.

[FR Doc.74-9134 Filed 4-19-74; 8:45 am]

[33 CFR Part 117]

[CGD 74 114]

NEW RIVER, FLA.

Proposed Drawbridge Operation Regulations

At the request of the City of Fort Lauderdale, the Coast Guard is considering revising the regulations for the SE 3rd Avenue drawbridge across the New River, Fort Lauderdale, Florida, to permit periods during the peak vehicular traffic periods on weekdays when the draw may remain closed to navigation. The draw is presently required to open on signal. This change is being considered because of an increase in vehicular traffic during the periods concerned.

Interested persons may participate in this proposed rule making by submitting written data, views, or arguments to the Commander, Seventh Coast Guard District (oan), Room 1018, Federal Building, 51 SW 1st Avenue, Miami, Florida 33130. Each person submitting comments should include his name and address, identify the bridge, and give reasons for any recommended change in the proposal. Copies of all written communications received will be available for examination by interested persons at the office of the Commander, Seventh Coast Guard District.

The Commander, Seventh Coast Guard District, will forward any comments received before May 20, 1974, with his recommendations to the Chief, Office of Marine Environment and Systems, who will evaluate all communications received and take final action on this proposal. The proposed regulations may be changed in the light of comments received.

In consideration of the foregoing, it is proposed that Part 117 of Title 33 of the

Code of Federal Regulations, be amended by:

1. Recodifying the present paragraphs (a), (b) and (c) of § 117.446c to paragraphs (b), (c) and (d) of § 117.446c.

2. Revising the last line of subparagraph (3) of the new paragraph (c) of § 117.446c by striking the words "paragraph (a)" and inserting the words "paragraph (b)."

3. Adding a new paragraph (a) to § 117.446c to read as follows:

§ 117.446c New River and South Fork of New River, Fort Lauderdale, Fla.; bridges.

(a) Southeast 3rd Avenue bridge across New River, mile 1.4.

(1) The draw shall open on signal except that from 7:30 a.m. to 8:30 a.m., and 4:30 to 5:30 p.m. Monday through Friday, the draw need not open for the passage of vessels.

(2) The draw shall open at any time for the passage of public vessels of the United States, tugs with tows, regularly scheduled cruise boats and vessels in distress. The opening signal from these vessels shall be four blasts of a whistle, horn, other sound producing device or by shouting.

(3) The owner of or agency controlling the bridge shall erect and maintain conspicuously on both sides thereof signs acceptable to the District Commander, setting forth the salient features of the regulations in this paragraph and paragraph (b) of this section.

(Sec. 5, 28 Stat. 362, as amended, sec. 6(g) (2), 80 Stat. 937; 33 U.S.C. 499, 49 U.S.C. 1655 (g) (2); 49 CFR 1.46(c) (5), 33 CFR 1.05-1(c) (4))

Dated: April 15, 1974.

R. I. PRICE,
Captain, U.S. Coast Guard, Act-
ing Chief Officer of Marine
Environment and Systems.

[FR Doc.74-9133 Filed 4-19-74; 8:45 am]

[33 CFR Part 117]

[CGD 74-101]

MANATEE RIVER, FLA.

Proposed Drawbridge Operation Regulations

At the request of the State of Florida Department of Transportation, the Coast Guard is considering revising the regulations for the U.S. Route 41 drawbridge across the Manatee River near Bradenton, Florida, to require at least three hours notice before the draw need open between 6 p.m. and 6 a.m. Presently during this period, the draw is required to open on signal. All other provisions set forth in 33 CFR 117.433 would remain unchanged. This change is being considered because of limited openings from 6 p.m. to 6 a.m. There were 44 in 1973, an average of less than four per month.

Interested persons may participate in this proposed rulemaking by submitting written data, views, or arguments to the Commander, Seventh Coast Guard District (oan), Room 1018, Federal Building,

51 SW 1st Avenue, Miami, Florida 33130. Each person submitting comments should include his name and address, identify the bridge, and give reasons for any recommended change in the proposal. Copies of all written communications received will be available for examination by interested persons at the office of the Commander, Seventh Coast Guard District.

The Commander, Seventh Coast Guard District, will forward any comments received before May 20, 1974, with his recommendations to the Chief, Office of Marine Environment and Systems, who will evaluate all communications received and take final action on this proposal. The proposed regulations may be changed in the light of comments received.

In consideration of the foregoing, it is proposed that 33 CFR Part 117 be amended by revising § 117.463 to read as follows:

§ 117.463 Manatee River, Fla.; U.S. Route 41 drawbridge near Bradenton.

(a) The draw shall open on signal from 6 a.m. to 7 a.m. and 9 a.m. to 4 p.m.

(b) The draw need not open for the passage of vessels from 7 a.m. to 9 a.m. and 4 p.m. to 6 p.m.

(c) From 6 p.m. to 6 a.m. the draw shall open on signal if at least three hours notice is given.

(d) The draw shall open on signal from 6 a.m. to 6 p.m. for the passage of public vessels of the United States, tugs with tows and vessels in distress. From 6 p.m. to 6 a.m. the draw shall open as soon as possible for the passage of such vessels. The opening signal from such vessels is four blasts of a whistle or horn or by shouting.

(e) During a hurricane alert issued by the United States Weather Bureau affecting the area the draw shall open on signal.

(f) The owner of or agency controlling the bridge shall conspicuously post notices containing the substance of these regulations, both upstream and downstream, on the bridge or elsewhere, in such a manner that they may be easily read at all times from an approaching vessel.

(Sec. 5, 28 Stat. 362, as amended; sec. 6(g) (2), 80 Stat. 937 (33 U.S.C. 499; 49 U.S.C. 1655(g) (2)); 49 CFR 1.46(c) (5), 33 CFR 1.05-1(c) (4))

Dated: April 15, 1974.

R. I. PRICE,
Captain, U.S. Coast Guard, Deputy
Chief, Office of Marine
Environment and Systems, By
direction of the Commandant.

[FR Doc. 74-9128 Filed 4-19-74; 8:45 am]

Federal Aviation Administration
[14 CFR Part 71]

[Airspace Docket No. 74-EA-25]

PROPOSED ALTERATION OF CONTROL
ZONE AND TRANSITION AREA

Notice of Proposed Rule Making

The Federal Aviation Administration is considering amending §§ 71.171 and

71.181 of Part 71 of the Federal Aviation Regulations so as to alter the Erie, Pa., Control Zone (39 FR 378) and Transition Area (39 FR 488).

We plan to commission a new instrument landing system (ILS) to serve Runway 24 at Erie International Airport, Pa. A new procedure is in development based on the ILS. Additionally, a review of the airspace requirements of the Erie terminal area for conformance with Terminal Instrument Procedures (TERPs) indicates that alteration of the Erie, Pa. Control Zone and 700-foot floor Transition Area will be required.

Interested parties may submit such written data or views as they may desire. Communications should be submitted in triplicate to the Director, Eastern Region, Attn: Chief, Air Traffic Division, Department of Transportation, Federal Aviation Administration, Federal Building, John F. Kennedy International Airport, Jamaica, New York 11430. All communications received on or before May 18, 1974, will be considered before action is taken on the proposed amendment. No hearing is contemplated at this time, but arrangements may be made for informal conferences with Federal Aviation Administration officials by contacting the Chief, Airspace and Procedures Branch, Eastern Region.

Any data or views presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official docket will be available for examination by interested parties at the Office of Regional Counsel, Federal Aviation Administration, Federal Building, John F. Kennedy International Airport, Jamaica, New York.

The Federal Aviation Administration, having completed a review of the airspace requirements for the terminal area of Erie, Pennsylvania, proposes the airspace action hereinafter set forth:

1. Amend § 71.171 of Part 71, Federal Aviation Regulations so as to delete the description of the Erie, Pennsylvania control zone and substituting the following in lieu thereof:

ERIE, PENNSYLVANIA

Within a 5-mile radius of the center, lat. 42°04'53" N., long. 80°10'43" W. of Erie International Airport, Erie, Pa.; within a 6-mile radius area of the center of the airport, extending clockwise from a 060° bearing to a 235° bearing from the airport; within a 9.5 mile radius of the center of the airport, extending clockwise from a 090° bearing to 175° bearing from the airport; within 3.5 miles each side of the Erie ILS localizer NE course extending from the 5-mile radius area to 8 miles NE of the OM.

2. Amend § 71.181 of Part 71, Federal Aviation Regulations so as to delete the description of the Erie, Pennsylvania 700-foot floor transition area and by substituting the following in lieu thereof:

ERIE, PENNSYLVANIA

That airspace extending upward from 700 feet above the surface within an 8.5 mile radius of the center, lat. 42°04'53" N., long.

80°10'43" W. of Erie International Airport, Erie, Pa.; within a 15.5 mile radius of the center of the airport extending clockwise from a 074° bearing to a 221° bearing from the Airport; within 4 miles each side of the Erie ILS localizer SW course, extending from the 8.5-mile radius area to 11 miles SW of the OM; within 5 miles each side of the Erie VORTAC 054° radial extending from the 8.5 mile radius area to 23.5 miles NE of the VORTAC.

This amendment is proposed under section 307(a) of the Federal Aviation Act of 1958 (72 Stat. 749; 49 U.S.C. 1348) and section 6(c) of the Department of Transportation Act (49 U.S.C. 1655 (c)).

Issued in Jamaica, N.Y., on April 3, 1974.

JAMES BISPO,
Deputy Director,
Eastern Region.

[FR Doc. 74-9074 Filed 4-19-74; 8:45 am]

Office of Pipeline Safety
[49 CFR Part 192]

[Docket No. OPS-27; Notice 74-2]

PLASTIC PIPE

Qualification for Use

The Office of Pipeline Safety (OPS) is considering several amendments to Part 192 concerning qualifications for use of plastic pipe. Amendments to Appendices A and B would incorporate by reference the 1970 and 1971 editions of the American Society for Testing Materials (ASTM) Specification D2513, "Standard Specification for Thermoplastic Gas Pressure Pipe, Tubing, and Fittings." An amendment to § 192.123(c) would adopt a standard dimension ratio (SDR) of 21 in determining minimum wall thickness for plastic pipe. An amendment to § 192.59 would permit the use of special sizes of plastic pipe where pipe of a diameter included in a listed specification is impractical to use. Finally, a further amendment to § 192.59 would require, as a qualification for use, that plastic pipe manufactured after the effective date of the amendment be manufactured in accordance with the latest listed edition of a listed specification. Listed specifications are those in Section I of Appendix B to Part 192.

To qualify for use under Part 192, plastic pipe must be manufactured in accordance with a listed edition of a listed specification. At present, there are two listed editions of ASTM Specification D2513: the 1966T and 1968 editions. Pipe manufactured in accordance with the latest published edition of a listed specification cannot be used under Part 192 until that edition is accepted by OPS and listed in Section I of Appendix B. The 1970 and 1971 editions of ASTM D2513 have been reviewed by OPS and found to provide satisfactory safety criteria. The 1970 edition only contains minor differences from the earlier editions, including improvements in the requirements for quality control in the pipe manufacturing process. However, in addition to the minor changes included in the 1970 edition, the 1971 edition contains a significant change

from previous editions, and adds a new material to those already approved.

Subsequent to publication of the 1968 edition of ASTM D2513, industry recognized that designation of the higher density polyethylenes into one series (3300) covered a broad range of molecular weights. Since the physical properties of the high density end of the range differed considerably from those at the lower end, it was decided to call the higher density material "ultra-high density" and redesignate it the 3400 series. The 1970 and 1971 editions reflect this split into "high" and "ultra-high" density material. This new designation contributes to safety by more clearly defining the characteristics of the various families of plastics.

The 1971 edition of ASTM D2513 changes the maximum SDR of 26, as contained in earlier editions, to 21. The SDR is the ratio of outside pipe diameter to wall thickness. Experience in the gas industry indicates that an SDR of 26 is not acceptable for gas pipelines because of unpredictable external stresses that may result from construction and soil stress effects and the problems associated with making taps on pipelines under pressure designed to an SDR of 26. Instead, experience shows that an SDR of 21, or less, provides a safer design for plastic pipe. For these reasons, most manufacturers of plastic pipe have stopped making pipe designed to an SDR of 26 because of the lack of demand from gas operators. Accordingly, in the 1971 edition of ASTM D2513, the highest SDR included is 21.

The OPS considers the reasons underlying the ASTM change in SDR from 26 to 21 significant enough to propose that the lower ratio be established as the maximum for qualifying pipe under Part 192. The proposed amendment to § 192.123(c) provides that the wall thickness for thermoplastic pipe may not be less than the outside pipe diameter (OD), in inches, divided by 21. However, where the OD divided by 21 would be less than 0.062 inches, this dimension, which is the standard currently in effect, would continue to be the minimum wall thickness allowed. Under the proposed amendment, all plastic pipe manufactured to the 1971 edition of ASTM D2513, if it is incorporated by reference as a listed specification, would be acceptable because that edition contains a maximum SDR of 21. Plastic pipe manufactured to earlier listed editions of ASTM D2513, or other listed specifications, would not qualify for installation under Part 192 unless the ratio of outside diameter to wall thickness is 21, or less.

The 1971 edition of ASTM D2513 provides specifications for the new material "polybutylene." This material has been extensively tested by the gas and plastic industries in Europe and the United States, both in the laboratory and in the field, and consistently found acceptable in all respects. The proposed amendment would permit operators to use polybutylene pipe which is manufac-

tured in accordance with the 1971 edition of ASTM D2513.

Special sizes of plastic pipe of a diameter between the sizes included in a listed specification are important to the gas industry, particularly for insert renewal of mains and service lines where the outside diameter is limited by the size of the facility being replaced. Special insert fittings of a diameter between the sizes included in a listed specification are also frequently necessary for particularized applications. At present, however, these pipes may not be used under Part 192. Notwithstanding the special sizes involved, OPS believes that in-between sizes of plastic pipe manufactured to the same strength levels required of pipe included in a listed specification provide a comparable level of safety. It is therefore proposed to amend § 192.59 to permit the use of special sizes of new or used plastic pipe which meet the material, strength, and design criteria for pipe which is included in a listed specification. The proposal would not permit special size pipe to be used in all instances, but only where pipe of a diameter included in a listed specification is impractical to use. This limitation would preserve the safety advantages which accrue from the general use of sizes of pipe included in the listed specification, while permitting the use of special size pipe in certain unusual situations.

A further proposed amendment to § 192.59 would require, as a qualification for use, that plastic pipe manufactured after the effective date of the amendment be manufactured in accordance with the latest listed edition of a listed specification. In contrast to this, the present rule permits the use of plastic pipe manufactured in accordance with any listed edition of a listed specification. For example, where there are three listed editions of a listed specification, manufacture to any one of the three would suffice. The proposed amendment would preclude the use of pipe manufactured after the effective date of the amendment in accordance with an edition of a listed specification other than the latest edition listed at the time of manufacture. Although OPS recognizes that, as a practical matter, plastic pipe is usually manufactured for the gas industry in accordance with the latest edition incorporated by reference in Part 192, the present rule does permit the use of pipe newly manufactured in accordance with earlier editions which are also incorporated by reference. This situation could result in the use of pipe newly manufactured without all the safety improvements included in the latest listed edition of a listed specification. Such a result is not in the best interest of the public or the gas industry, especially when the technology, methods, and materials for plastic pipe are changing rapidly.

At the same time, stockpiled pipe manufactured to earlier listed editions of a listed specification meets the minimum standards of safety as the state of the art provided at the time of manufacture.

Except where improvements in a later listed edition of a listed specification make certain standards included in earlier listed editions unsatisfactory, the continued use of stockpiled pipe should not be precluded. Therefore, the use of stockpiled pipe manufactured in accordance with any listed edition of a listed specification before the effective date of the proposed amendment would continue to be permitted, except as its use may be precluded by the SDR of 21 proposal discussed above.

In consideration of the foregoing, it is proposed to amend 49 CFR Part 192 as follows:

1. In § 192.59, paragraph (a) (1) and (b) (1) would be amended and a new paragraph (c) would be added to read as follows:

§ 192.59 Plastic pipe.

(a) New plastic pipe is qualified for use under this part if—

(1) Except as provided in paragraph (c) of this section and § 192.123(c), when the pipe is manufactured, it meets the requirements of the latest listed edition of a listed specification, except that before (effective date) it may be manufactured in accordance with any listed edition of a listed specification; and

(b) Used plastic pipe is qualified for use under this part if—

(1) Except as provided in paragraph (c) of this section and § 192.123(c) when the pipe is manufactured, it meets the requirements of the latest listed edition of a listed specification, except that before (effective date) it may be manufactured in accordance with any listed edition of a listed specification;

(c) For the purpose of paragraphs (a) (1) and (b) (1) of this section, where pipe of a diameter included in a listed specification is impractical to use, pipe of a diameter between the sizes included in a listed specification may be used if it—

(1) Meets the strength and design criteria required of pipe included in that listed specification; and

(2) Is manufactured from plastic compounds which meet the criteria for material required of pipe included in that listed specification.

2. In Section II of Appendix A, subsection B.18. would be amended by adding "D2513-70" and "D2513-71" within the parenthetical expression.

3. In Section I of Appendix B, the next to the last item, beginning "ASTM D2513," would be amended by adding the numbers "1970" and "1971" within the parenthetical expression.

4. In § 192.123, paragraph (c) would be amended to read as follows:

§ 192.123 Design limitations for plastic pipe.

(c) The wall thickness for thermoplastic pipe may not be less than the larger of the following:

- (1) 0.062 inches; or
 (2) In accordance with the formula—

$$t = \frac{OD}{21} \text{ where}$$

t = Wall thickness in inches.
 OD = Outside pipe diameter in inches.

Interested persons are invited to participate in this rule-making action by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket and notice numbers and be submitted in duplicate to the Director, Office of Pipeline Safety, Department of Transportation, Washington, D.C. 20590. All communications received on or before June 3, 1974.

This notice is issued under the authority of section 3 of the Natural Gas Pipeline Safety Act of 1968 (49 USC 1672), § 1.58(d) of the regulations of the Office of the Secretary of Transportation (49 CFR 1.58(d)), and the redelegation of authority to the Director, Office of Pipeline Safety, set forth in Appendix A to Part 1 of the regulations of the Office of the Secretary of Transportation (49 CFR Part 1).

Issued in Washington, D.C. on April 16, 1974.

JOSEPH C. CALDWELL,
 Director,
 Office of Pipeline Safety.

[FR Doc. 74-9148 Filed 4-19-74; 8:45 am]

[49 CFR Parts 192, 195]

[Docket No. OPS-25; Notice No. 74-3]

TRANSPORTATION OF NATURAL AND OTHER GAS AND HAZARDOUS LIQUIDS BY PIPELINE

Welding Requirements

This notice proposes to incorporate by reference sections 2.0, 3.0, and 6.0 of the 1971 (12th) edition of API Standard 1104 "Standard for Welding Pipe Lines and Related Facilities" into the Federal gas pipeline and liquid pipeline safety regulations, respectively Parts 192 and 195 of Title 49 of the Code of Federal Regulations. The notice also proposes certain changes in the regulations which would be necessary if the proposed incorporation by reference of the 12th edition is adopted, as well as editorial modifications for clarity.

The welding specifications in sections 2.0, 3.0, and 6.0 of the 1968 (11th) edition of API Standard 1104 are currently incorporated by reference in Parts 192 and 195. Part 192 incorporates all three sections, and Part 195 incorporates sections 3.0 and 6.0. Section 2.0 pertains to the qualification of welding procedures; section 3.0 pertains to the qualification of welders; and section 6.0 pertains to the standards of acceptability for nondestructive testing.

In a petition for rule making recommending that OPS adopt the 1971 edition, the American Petroleum Institute (API) stated that the 1971 edition contains no major substantive changes to the specifications in the 1968 edition but

does contain a number of editorial changes which clarify content and scope. The Office of Pipeline Safety (OPS) has reviewed the 12th edition and concurs in the API's characterization of changes. In addition, OPS believes that as a result of the changes, the 1971 edition reflects current field welding practices better than the 1968 edition.

The OPS recognizes that outright replacement of the 11th edition by the 12th edition could result in a hardship for welders qualified under § 192.227 and § 195.222 in accordance with the 11th edition. These welders would have to requalify in accordance with the 12th edition. A similar burden would be placed on operators who would have to requalify their existing welding procedures under § 192.225 in accordance with the 12th edition. The OPS does not believe that requalifications are justified on the basis of changes contained in the 12th edition. Consequently, the proposed amendments recognize the soundness of welding procedures and welders qualified under the 11th edition. The proposal would require, however, that after the amendments become effective the 12th edition be used when welding procedures qualified under the 11th edition are changed and requalified, new welders are qualified, or welders qualified under the 11th edition are requalified. Likewise, the acceptability of welds made after the effective date of the proposed amendments would be based on the 12th edition.

In consideration of the foregoing, the OPS proposes to amend Parts 192 and 195 of Title 49 of the Code of Federal Regulations as follows:

1. Section 192.225(a) would be amended to read as follows:

§ 192.225 Qualification of welding procedures.

(a) Each welding procedure must be qualified under section IX of the ASME Boiler and Pressure Vessel Code or section 2 of the 1971 edition of API Standard 1104, whichever is appropriate to the function of the weld, except that a welding procedure qualified under section 2 of the 1968 edition of API Standard 1104 before (effective date) may continue to be used but may not be requalified under that edition.

2. Section 192.227(a)(2) would be amended to read as follows:

§ 192.227 Qualification of welders.

(2) Section 3 of the 1971 edition of API Standard 1104 or, if qualified before (effective date), section 3 of the 1968 edition of API Standard 1104, except that a welder may not requalify under the 1968 edition.

3. Section 192.229(c) would be amended to read as follows:

§ 192.229 Limitations on welders.

(c) A welder qualified under § 192.227 (a) may not weld unless within the pre-

ceding 6 calendar months the welder has had one weld tested and found acceptable under section 3 or 6 of the 1971 edition of API Standard 1104 or, in the case of tests conducted before (effective date), section 3 or 6 of the 1968 edition of API Standard 1104.

4. Section 192.241(c) would be amended to read as follows:

§ 192.241 Inspection and test of welds.

(c) The acceptability of a weld that is nondestructively tested or visually inspected is determined according to the standards in section 6 of the 1971 edition of API Standard 1104.

5. Item II.A.8 of Appendix A of Part 192 would be amended to read as follows:

APPENDIX A—INCORPORATED BY REFERENCE

II. Documents incorporated by reference. A. American Petroleum Institute:

8. API Standard 1104 "Standard for Welding Pipe Lines and Related Facilities" (1968 and 1971 editions).

6. Section 195.222 would be amended to read as follows:

§ 195.222 Welders: Testing.

Each welder must be qualified in accordance with section 3 of the 1971 edition of API Standard 1104 or, if qualified before (effective date), in accordance with section 3 of the 1968 edition of API Standard 1104, except that a welder may not requalify under the 1968 edition.

7. Section 195.228 would be amended to read as follows:

§ 195.228 Welds and welding inspection: Standards of acceptability.

Each weld and welding must be inspected to ensure compliance with the requirements of this subpart. Visual inspection must be supplemented by nondestructive testing. The acceptability of a weld is determined according to the standards in section 6 of the 1971 edition of API Standard 1104.

8. In the table of section, § 195.228 would be amended to read as follows:

Sec. 195.228 Welds and welding inspection: Standards of acceptability.

Interested persons are invited to participate in this rule-making action by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket and notice numbers and be submitted in duplicate to the Director, Office of Pipeline Safety, Department of Transportation, Washington, D.C. 20590. All communications received by June 3, 1974, will be considered by the Director before taking final action on the notice. All comments will be available for examination by interested persons at the Office of Pipeline Safety before and after the closing date for comments. The proposal contained in this notice may be changed in the light of comments received.

This notice is issued under the authority of section 3 of the Natural Gas Pipe-

line Safety Act of 1968 (49 U.S.C. § 1672), sections 831-835 of Title 18, United States Code, section 6(e) (4) of the Department of Transportation Act (49 U.S.C. 1655(e) (4)), § 1.58(d) of the regulations of the Office of the Secretary of Transportation (49 CFR 1.58(d)), and the redelegation of authority to the Director, Office of Pipeline Safety, set forth in Appendix A to Part 1 of the regulations of the Office of the Secretary of Transportation (49 CFR Part 1).

Issued in Washington, D.C., on April 16, 1974.

JOSEPH C. CALDWELL,
Director,
Office of Pipeline Safety.

[FR Doc.74-9149 Filed 4-19-74; 8:45 am]

CIVIL AERONAUTICS BOARD

[14 CFR Parts 288, 399]

[Docket No. 26598; EDR-267; PSDR-38]

EXEMPTION OF AIR CARRIERS FOR MILITARY TRANSPORTATION

Notice of Proposed Rule Making

Correction

In FR Doc. 74-8719 appearing at page 13672 in the issue for Tuesday, April 16, 1974, the headings should read as set forth above.

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 52]

ILLINOIS, MICHIGAN, MINNESOTA AND WISCONSIN

Proposed Revisions to Implementation Plans

On May 31, 1972 (37 FR 10482), pursuant to section 110 of the Clean Air Act and 40 CFR Part 51, the Administrator approved portions of the Illinois, Michigan, Minnesota and Wisconsin plans for the implementation of the national ambient air quality standards. At that time, the Administrator also approved dates by which national ambient air quality standards were to be attained.

On February 19, 1974, the Administrator proposed State submitted revisions consisting of compliance schedules for individual sources in Illinois, Indiana, Michigan, Minnesota, and Wisconsin for public comment. Final action on these schedules will be taken shortly. Additional compliance schedule revisions have subsequently been received from the State of Illinois, Michigan, Minnesota and Wisconsin. These schedules have been subjected to State public hearings after due notice thereof and have been adopted by these States as plan revisions.

These submitted schedules are identified in this notice by source, location, applicable regulation, date schedule adopted and final compliance date and, are set forth as proposed rulemaking. Public comment is being solicited as to whether the schedules should be approved pursuant to section 110 of the

Clean Air Act. Copies of the compliance schedules with transcripts of the State-held public hearings are available for public inspection between 8:15 a.m. and 4:45 p.m., Monday through Friday at the Region V Office.

Interested persons may participate in this rulemaking by submitting written comments, preferably in triplicate, to the Regional Administrator, Environmental Protection Agency, Region V, One North Wacker Drive, Chicago, Illinois 60606. All relevant comments received within 30 days of this notice will be considered. Comments received will be available during the business hours specified above at the Region V Office.

(Sec. 110 (a) of the Clean Air Act, as amended 42 USC 1857c-5 (a))

Dated: April 11, 1974.

JOHN QUARLES,
Acting Administrator.

It is proposed to amend 40 CFR Part 52 as follows:

Subpart O—Illinois

1. In § 52.720, paragraph (d) is amended as follows:

§ 52.720 Identification of plan.

(d) Revisions to the plan were submitted on:

(2) September 14, 1973, October 11, 1973 and November 26, 1973. The following compliance schedules for the sources identified below have been submitted as revisions to the plan pursuant to section 110(a) (3) of the Clean Air Act. All regulations cited are air pollution control regulations for the State, unless otherwise specified.

ILLINOIS

Source	Location	Regulation involved	Date schedule adopted	Final compliance date
CHRISTIAN COUNTY				
Illinois Roses, Ltd.	Panel	204(c)	May 22, 1973	May 30, 1975
COOK COUNTY				
Abitibi Corp.	Chicago	205(f)	Apr. 4, 1973	Apr. 30, 1975
Bird & Son	do	204(c)	Mar. 5, 1973	May 30, 1975
Chief Laundry	do	204(c)	Apr. 4, 1973	May 30, 1975
Commonwealth Edison:				
Calumet Station	do	207(b)	Apr. 27, 1973	Feb. 1, 1980
Bloom TSS-179	Chicago Heights	207(b)	Apr. 2, 1973	Jan. 1, 1981
Johnson & Johnson (No. 2 coating oven)	Bedford Park	205(f)	June 19, 1973	May 30, 1975
Material Service Corp (Ewing St.)	Chicago	204(c)	Aug. 21, 1973	Do.
Montana Laundry & Dry Cleaning, Inc.	do	204(c)	May 8, 1973	Do.
Multigraphics Division:				
(a) Paint shop 100	Mount Prospect	205(f)	Dec. 14, 1973	Do.
(b) Solvent coating plant 700	do	205(f)	Jan. 23, 1974	Do.
(c) Diazo coating department 800	do	205(f)	Apr. 27, 1973	Do.
National Can Corp. (clearing plant)	Chicago	205(f)	June 1, 1973	Do.
National Can Corp. (Kedzie plant)	do	205(f)	June 5, 1973	Do.
Produce Terminal	do	204(c)	Mar. 22, 1973	Do.
R. R. Donnelley & Sons:				
(a) Afterburner Y-28	do	205(f)	Feb. 1, 1973	May 5, 1975
(b) Afterburner Y-246	do	205(f)	Oct. 17, 1973	Do.
Schneider Metal Manufacturing Co.: (a) Drying oven	Chicago	204(c)	Mar. 9, 1973	Do.
Scholl, Inc.	Morton Grove	205(f)	Nov. 7, 1973	Do.
Singer	Northlake	205(f)	Oct. 18, 1973	Apr. 1974
Sun Chemical Corp.	do	205(f)	do	do
DE KALB COUNTY				
Board of Regents	De Kalb	203(e)	Oct. 18, 1973	July 25, 1974
DU PAGE COUNTY				
Campbell Soup Co.	West Chicago	204(c)	May 16, 1973	May 30, 1975
Du-Kane Asphalt Co: Plant No. 2	Addison	204(c)	Feb. 28, 1973	Do.
Plant No. 1	West Chicago	204(c)	Feb. 8, 1973	Do.
Material Service Corp.	Benseville	204(c)	July 30, 1973	Do.
GRUNDY COUNTY				
Federal Paper Board Co., Inc.	Morris	203(g)	Aug. 9, 1973	Apr. 1, 1975
JOLIET COUNTY				
Vulcan Materials Co.	Joliet	205(f)	Oct. 25, 1973	Apr. 1, 1974
KANE COUNTY				
Associated Newspaper Group (Crescent Printing Co.)	St. Charles	205(f)	May 25, 1973	May 30, 1975
Vendo Co (paint units drawing 3 and 5)	Aurora	205(f)	Nov. 27, 1973	Mar. 31, 1975

PROPOSED RULES

Source	Location	Regulation involved	Date schedule adopted	Final compliance date
KANKAKEE COUNTY				
J. R. Short Milling Co.	Kankakee	2-2.53	Oct. 11, 1973	Apr. 30, 1975
Roper Corp.	do.	204(c)	Oct. 15, 1973	May 30, 1975
KENDALL COUNTY				
Monarch Foundry:				
(a) Cupola	Plano	203(b)	July 24, 1973	May 1975
(b) Casing shake out process	do.	do.	do.	May 1974
LAKE COUNTY				
Abbott Labs (boiler No. 3)	North Chicago	204(c)	Oct. 4, 1973	May 30, 1975
Commonwealth Edison (all units)	Waukegan	203(g)	do.	Apr. 4, 1974
R. A. Briggs & Co.	Lake Zurich	205(f)	Sep. 14, 1973	June 30, 1974
LA SALLE COUNTY				
E. I. Dupont de Nemours & Co.	Seneca	207(d)	Oct. 18, 1973	July 15, 1974
LAWRENCE COUNTY				
Texaco, Inc.	Lawrenceville	205(f)	Oct. 11, 1973	Oct. 11, 1974
MACON COUNTY				
Caterpillar Tractor Co. (boiler number 3)	Decatur	203(g)	July 3, 1973	May 30, 1975
Grohne Concrete Products Co.	do.	204(c)	Mar. 9, 1973	Do.
Mallinckrodt Chemical Works (Pharmaceutical Products Division)	do.	204(c)	Apr. 3, 1973	Do.
MADISON COUNTY				
John Morrell & Co. (Hunter Packing Co.)	East St. Louis	204(c)	June 13, 1973	May 30, 1975
Owens-Illinois, Inc. (Glass Container Division boilers, 1, 2, 3)	Alton	203(g), 204(e)	Mar. 12, 1973	Do.
Rellly Tar & Chemical Granite City Corp.:				
(a) Plant 13 waste gas burner		204(f)	Oct. 12, 1973	Mar. 30, 1974
(b) Tar distillation plant		206	Sept. 6, 1973	Mar. 31, 1974
Shell Oil Co. (Wood River refinery):				
(a) Refinery fuel system	Roxana	205(f)	Oct. 9, 1973	May 30, 1975
(b) Vacuum flashing unit	do.	205(f)	do.	Do.
Union Electric Co. (Venice plant number 2)	Venice	204(c)	July 19, 1973	May 30, 1975
(a) Boilers 7, 8.				
MASSAC COUNTY				
Electric Energy, Inc.	Joppa	204(c)	Oct. 10, 1973	May 30, 1975
MCHENRY COUNTY				
Morton-Norwich Products, Inc.	Woodstock	204(c)	May 29, 1973	Apr. 1, 1974
MONTGOMERY COUNTY				
Central Illinois Stone Co., Inc.	Nokomis	203(b)	Oct. 18, 1973	Mar. 1, 1974
MORGAN COUNTY				
Central Illinois Public Services	Merdesia	204(e)	Oct. 4, 1973	Nov. 4, 1974
Mobil Oil Corp.	Jacksonville	204(c)	Sept. 10, 1973	May 30, 1975
PEORIA COUNTY				
Caterpillar Tractor Co.:				
(a) Boiler BV 1	Peoria	203(g), 204(c)	Apr. 20, 1973	May 30, 1975
(b) Boiler BV 2	do.	203(g), 204(c)	do.	Do.
J.T. Fennell Co., Inc.	Chillicothe	204(c)	Sept. 14, 1973	Do.
PUTNAM COUNTY				
Illinois Power	Hennepin	203(g)	July 31, 1973	June 30, 1974

PROPOSED RULES

14223

Source	Location	Regulation Involved	Date schedule adopted	Final compliance date
ROCK ISLAND COUNTY				
Deere & Co.:				
(a) Boilers 1, 2	East Moline	204(c)	Apr. 3, 1973	May 30, 1975
(b) Boilers 5, 6	do	204(c)	do	Do.
(c) Boilers 7, 8	do	203(g), 204(e)	do	Nov. 1, 1975
(d) Boiler 9	do	203(g), 204(c)	do	May 30, 1975
				Do.
ST. CLAIR COUNTY				
Building Products Corp.	Swansea	204(f)	Mar. 8, 1973	May 30, 1975
Charles Meyers & Co.	Belleville	204(c)	Aug. 1, 1973	(1)
Union Electric (Cahokia plant No. 1.)	Sauget	204(c)	Apr. 5, 1973	May 31, 1975
WABASH COUNTY				
Mount Carmel Public Utility (a) Boilers Nos. 1, 4.	Mount Carmel	3-3.112	Oct. 25, 1973	May 30, 1974
WILL COUNTY				
Texaco, Inc.:				
(a) Catalytic refining unit No. 1	Lockport	204(f)	Aug. 21, 1973	May 1, 1975
(b) Catalytic refining unit No. 2	do	204(f)	July 31, 1973	Do.
(c) Delayed coking unit	do	204(f)	Sep. 18, 1973	Do.
WILLIAMSON COUNTY				
Norge Fedders Corp.	Herrin	205(f)	Oct. 25, 1973	Mar. 15, 1975
WINNEBAGO COUNTY				
Commonwealth Edison (Sabrooke) unit 1.	Rockford	203(g)	Oct. 4, 1973	Sep. 21, 1974
Durgum Concrete Pipe Co.	Beloit	204(c)	July 27, 1973	May 30, 1975
Rockford Public Schools	Rockford	203(e)	Sep. 13, 1973	Aug. 30, 1975
WHITESIDE COUNTY				
Northwestern Steel & Wire Co.	Sterling	204(c)	Aug. 13, 1973	(1)

¹ None specified.

Subpart X—Michigan

2. § 52.1170, paragraph (d) is amended as follows:

§ 52.1170 Identification of plan.

(d) Revisions to the plan were submitted on:

* * * * *

(2) February 16, 1973, May 4, 1973. The following compliance schedules for the sources identified below have been submitted as revisions to the plan pursuant to section 110(a)(3) of the Clean Air Act. All regulations cited are air pollution control regulations for the State, unless otherwise specified.

MICHIGAN

Source	Location	Regulation Involved	Date schedule adopted	Final compliance date
EMMET COUNTY				
Penn-Dixie Cement Corp.	Resort township	336.44	Jan. 18, 1973	May 1, 1974
MACOMB COUNTY				
Ford Motor Co.	Sterling Heights	336.49	Mar. 14, 1973	July 1, 1975
				July 1, 1978
MIDLAND COUNTY				
Dow Chemical Corp. (southwest side power plants—all boilers).	Midland	336.44	Mar. 14, 1973	Jan. 1, 1974
		336.49	do	Jan. 1, 1980

PROPOSED RULES

MICHIGAN—Continued

Source	Location	Regulation involved	Date schedule adopted	Final compliance date
ST. CLAIR COUNTY				
Detroit Edison:				
(a) Boilers 1-5	St. Clair	336.44	Mar. 14, 1973	July 1, 1975
(b) Boilers 6, 7	do.	336.44	do.	Jan. 1, 1980

Subpart Y—Minnesota

3. In § 52.1220, paragraph (d) (2) is amended as follows:

§ 52.1220 Identification of plan.

(d) Revisions of the plan were submitted on:

MINNESOTA

Source	Location	Regulation involved	Date schedule adopted	Final compliance date
ST. LOUIS COUNTY				
International Multifoods Corp.	Duluth	APC5, 6	Dec. 14, 1972 as amended May 12, 1973	Dec. 31, 1974

Subpart YY—Wisconsin

4. In § 52.2570 paragraph (d) is amended as follows:

§ 52.2570 Identification of plan.

(d) Revisions to the plan were submitted on:

WISCONSIN

Source	Location	Regulation involved	Date schedule adopted	Final compliance date
KENOSHA COUNTY				
ADM Grain Co.	Superior	NR154.11(4)(b)	July 18, 1973	July 1, 1974
M & O Elevators Inc.:				
(a) Units 1-6	do.	NR154.11(4)(b)	Sept. 25, 1973	June 30, 1974
(b) Units 7-11	do.	NR154.11(4)(b)	do.	Apr. 30, 1975
(c) Units 12-17	do.	NR154.11(4)(b)	do.	Dec. 31, 1975
LINCOLN COUNTY				
American Motors Corp. (Main Plant)	Kenosha	NR154.13(2)(1)	Sept. 25, 1973	Apr. 1, 1974
MARATHON COUNTY				
Owens-Illinois, Inc. (Forest Products Division) (boilers 3, 4, 6, 7, 8).	Tomahawk	NR154.11(5)(b)	Sept. 25, 1973	Dec. 31, 1974
ONEIDA COUNTY				
Weyerhaeuser Co.	Rothschild	NR154.11(5)(b)	Sept. 17, 1973	Oct. 31, 1974
OZAUKEE COUNTY				
Allis Chalmers Corp.	Point Washington	NR154.13(2)(1)	July 13, 1973	Jan. 1, 1975
Doerr Electric Corp.	Cedarburg	NR154.13(2)(1)	Sept. 4, 1973	Do.
EST Co., Inc.	Grafton	NR154.13(2)(1)	do.	Do.
Jar-Mar Co., Inc.	do.	NR154.13(2)(1)	do.	Do.
Tecumseh Products Co. (Power Products Division).	do.	NR154.13(2)(1)	July 13, 1973	June 1, 1974

PROPOSED RULES

2. Through recent meetings and correspondence with representatives of the Committee on Radio Frequencies of the National Academy of Sciences (CORF) and with other Government agencies, the Commission has become aware of an increasing need for the use of radio for telemetering and tracking purposes in connection with scientific studies in the fields of wildlife biology and oceanography. Wildlife telemetering operations are conducted primarily by biologists and physiologists using remote observation techniques in the study of animal behavior. To study the migratory habits of animals and birds, small, lightweight, low powered transmitters using printed circuit construction are fastened to the specimen by any of several means. After tuning to the specific frequency, the researcher uses portable direction finding equipment to accurately track the movements of the animal or bird. Oceanographers studying the seas and marine life employ small scientific buoys. These inexpensive scientific instruments are allowed to drift and are used in substantial numbers to measure and record such data as salinity, current speed, temperatures, sea state, etc. After the data has been collected, a radio beacon is required to locate the buoy. The Commission has been informed by the CORF that other methods of locating the buoys not using radio techniques have been tried. These other methods include flashing lights and flags, but the recovery rate using these techniques has been low. In addition to the use of radio for locating the buoys, small quantities of data may be transmitted from the buoy using sub-carrier frequency modulation or pulse-position modulation.

3. Presently, such operations are being carried out under authority of Part 15 of the Commission's Rules or on a licensed basis in the Experimental (Research) Radio Service under Part 5. Frequencies employed for these operations vary widely as do equipment capabilities and costs. This situation has apparently led to considerable confusion among potential users concerning applicable frequencies and regulations and may have resulted in some operations in unauthorized bands. This latter problem could be particularly serious because of the difficulty of identifying and controlling interference from transmitters which may be attached to wildlife, including birds in flight.

4. In response to this problem, the CORF requested that two frequency bands be specifically designated for scientific telemetering and tracking: a 10-15 kHz band below 180 MHz and a 20-30 kHz band above 180 MHz. Relatively low transmitter power output levels of 10 milliwatts from ocean buoy transmitters and 1 milliwatt from wildlife transmitters were recommended by the CORF. Designating specific bands for such use would help to minimize the risk of interference in other bands, assist the scientific community in its planning efforts and serve as a guide for the future design and development of equipment.

5. The CORF proposals were coordinated with the Interdepartment Radio Advisory Committee (IRAC) to determine if Government agencies have similar requirements to those expressed by CORF and, if so, to propose a joint frequency provision for both Government and non-Government use. A sub-group of the IRAC was established to deal with this question and its recommendations were subsequently forwarded to the Commission. The bands 40.66-40.70 MHz and 216-220 MHz, both of which are primarily Government bands, were recommended by the IRAC group with the stipulations, however, that the new operations be secondary to other Government use of the bands, that licensing be required in lieu of Part 15 operation, and that all applications be coordinated through the normal FCC/IRAC mechanism to minimize the risk of interference to Government stations. Other recommendations of the group included a limitation on power output to 10 mw for wildlife applications and 100 mw for ocean buoys; restriction of modulation types to A0, A1, A2, F1, or F2; specification of authorized bandwidth of emission not to exceed 1 kHz; and the requirement for equipment type acceptance.

6. From an administrative viewpoint, it appears appropriate to continue to license such scientific operations in the Experimental (Research) Radio Services under Part 5 of the Rules. Whereas the general frequency provision under Part 5 is very broad, we would add a footnote to § 5.202(d) containing the substance of the IRAC recommendations and stating that frequencies in the bands 40.66-40.70 MHz and 216-220 MHz, should be used for these operations to the extent practicable. An appropriate US footnote would be added to the Table of Frequency Allocations in Part 2. The text of the proposed footnotes and the necessary changes to the Table are reflected in the appendix hereto. These amendments, we believe, would satisfy the needs of the scientific community and at the same time insure adequate safeguards for the other users of these bands. It should be pointed out that, while we are not proposing a Part 15 provision¹ as preferred by the CORF, the designation of specific bands will simplify and expedite the frequency coordination process required under Part 5.

7. As indicated above, the proposed telemetering and tracking operations will be secondary to other services in the bands in question. In the 40.66-40.70 MHz band, such operations would be subject to receiving interference from the operation of industrial, scientific and medical equipment as well as from Government stations. However, because most wildlife and oceanographic research operations contemplated by this action are conducted either at sea or in remote areas, interference from ISM equipment concentrated in built-up areas is not ex-

¹ Action taken herein will not preclude the operation of such devices on a non-licensed basis to the extent presently permitted under Part 15 of the Rules.

pected to be a serious problem. In the 216-220 MHz band, scientific tracking and telemetering would be secondary to Government stations and to any non-Government stations authorized in accordance with footnote US 114 to the allocation table.

8. This proposal to amend the Commission's rules is issued under authority contained in sections 4(i) and 303(c) and 303(r) of the Communications Act of 1934, as amended.

9. Pursuant to § 1.415 of the Commission's rules, comments in support of, or in opposition to, the proposed amendment may be filed on or before May 23, 1974. Reply comments may be filed on or before June 3, 1974. All relevant and timely filed comments and reply comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision in this proceeding, the Commission may also take into account other relative information before it, in addition to the comments invited by this Notice.

10. In accordance with the provisions of § 1.419(b) of the Commission's rules, an original and fourteen copies of all statements, briefs, or comments filed shall be furnished the Commission.

11. Responses will be available for public inspection during regular business hours in the Commission's Public Reference Room at its Headquarters in Washington, D.C.

Adopted: April 9, 1974.

Released: April 16, 1974.

FEDERAL COMMUNICATIONS
COMMISSION,
[SEAL] VINCENT J. MULLINS,
Secretary.

Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

1. Section 2.106 is amended by adding a new footnote US... to the Table of Frequency Allocations as follows:

§ 2.106 Table of Frequency Allocations.

Band (MHz)	United States	
	Allocation	
40-42 (236)	G, NG (US 94) (US --)	
216-220	G, NG (US 114) (US --)	

US... Use of frequencies in the bands 40.66-40.70 and 216-220 MHz may be authorized to Government and non-Government stations on a secondary basis for the tracking of, and telemetering of scientific data from, ocean buoys and wildlife. Modulation types will be limited to A0, A1, A2, F1 and F2; occupied bandwidth shall not exceed 1 kHz; and maximum transmitter output power shall not exceed 10 milliwatts for wildlife applications and 100 milliwatts for ocean buoys. Air-borne wildlife telemetry in the 216-220 MHz band will be limited to the 216.000-216.050 MHz portion of the band.

2. Section 5.203 is amended by adding a footnote as follows:

§ 5.203 Frequencies for experimental service (research).

Stations operating in the Experimental Service (Research) may be authorized to use any Government or non-Government frequency designated in the Table of Frequency Allocations set forth in Part 2 of this chapter as available for assignment to this service: *Provided*, That the need for the specific frequency or frequencies requested is fully justified by the applicant.³

[FR Doc.74-9171 Filed 4-19-74;8:45 am]

[Docket No. 20017; RM-2093]

[47 CFR Part 73]

FM BROADCAST STATIONS IN HEALDSBURG, CALIFORNIA

Table of Assignments

In the matter of amendment of § 73.202(b), Table of assignments, FM Broadcast Stations (Healdsburg, California), Docket No. 20017, RM-2093.

1. The Commission, by the Chief, Broadcast Bureau, has before it for consideration a petition for rule making filed by Wallace Heusser ("Heusser"), an opposition to the petition filed by Redwood Empire Stereocasters ("Redwood") and Heusser's reply to the Redwood opposition.

2. Heusser seeks the assignment of Channel 225 to Healdsburg, California,¹ in order to bring a first local service to the community.² He also asserts that operating with maximum facilities such a station could provide extensive first FM service in its coverage area. Redwood questions the need for a station at Healdsburg, fears the competitive impact on its nearby station and questions the ability to provide a first FM service.

3. Healdsburg, a community of 5,438 persons, located in Sonoma County, population 204,885, has no local broadcast facility. Redwood's station is also in Sonoma County at Santa Rosa, population 40,645. The distance between the two communities is about 12-15 miles and the site a Healdsburg station would have to use would put it some distance further from Santa Rosa. Even so, 1 mV/m coverage would include Santa Rosa and this overlapping of service areas is at the heart of Redwood's con-

³ Notwithstanding the broad frequency provision for this Service, applicants desiring authorization for the purpose of wildlife or ocean buoy telemetering and/or tracking should, to the extent practicable, use frequencies in the bands 40.66-40.70 MHz or 216-220 MHz, in accordance with footnote US... to the Table of Frequency Allocations, § 2.106 of this chapter. Transmitters to be used in these bands for this purpose must be type accepted in accordance with the procedure set forth in § 2.571 of this chapter.

¹ Doing so would require a change in the unoccupied assignment at Willows, California, from Channel 224A to Channel 288A.

² Although a site 9 miles from Healdsburg would need to be used because of spacing requirements, the requisite level of coverage to Healdsburg could be provided from there.

cern. According to Redwood, Healdsburg is not an isolated community but one that receives a number of signals. Redwood also points out that Healdsburg has been listed by it as one of the communities it has undertaken to serve. While in no way deprecating the attention that Redwood would show to Healdsburg's needs, the fact is that such service cannot be functionally the equivalent of having a station at Healdsburg. The presence of reception services from elsewhere cannot form the basis for refusing to explore the means to provide a first local service if that is possible and otherwise consistent with our responsibilities in this area.

4. The proposed use of a Class B channel for a community of this size has been defended in terms of the first FM service which would result. Redwood's opposition disputes this, but in doing so it relied on noncommercial station coverage. As a result, its showing is defective, for such stations are not the equivalent of commercial stations. If the two educational stations are not included, it is clear that a significant amount of first FM service could be provided. However, the exact nature of the situation is not clear and Heusser should provide a showing in accordance with the procedures outlined in *Roanoke Rapids*, 9 F.C.C. 2d 672 (1967).

5. Redwood questions the need for the proposed assignment on the basis that Healdsburg's population has grown little, but official census figures suggest to the contrary that it has a healthy growth rate. Equally unpersuasive is Redwood's assertion that a station such as is contemplated could damage it economically and harm its ability to serve the public. Even if such a question were relevant here, the fact is that we have been offered no specific date whatever. In any event, Redwood would have an opportunity to make its case in connection with any application which would be filed if the channel were to be assigned.

6. Based on the information before us, we are of the view that rule making to explore Healdsburg's need for a first local service is appropriate. It may well be that a Class B channel could be justified for a community of Healdsburg's size. However, we need to know if a Class A channel is available and if Heusser would be willing to utilize it. To aid us in making any necessary choice, we also need accurate data depicting the coverage that a Class B station could provide which a Class A station could not. Heusser should also confirm his intention to proceed if the requested channel were to be assigned.

7. *Cut-off procedure.* The following procedure will govern the consideration of filings in this proceeding:

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments.

(b) With respect to petitions for rule-

making which conflict with the proposal in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given, as long as they are filed before the date for filing initial comments herein. If filed later than that, they will not be considered in connection with the decision in this docket.

8. In view of the foregoing, and pursuant to authority found in sections 4(i), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and § 0.281(b) (6) of the Commission's Rules and Regulations, it is proposed to amend the FM Table of Assignments (§ 73.202 (b)) to read as follows:

City	Channel No.	
	Present	Proposed
Healdsburg, Calif.....		225
Willows, Calif.....	224A	288A

9. Pursuant to applicable procedures set out in § 1.415 of the Commission's Rules and Regulations, interested parties may file comments on or before May 23, 1974, and reply comments on or before June 3, 1974. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings.

10. In accordance with the provisions of § 1.419 of the Commission's Rules and Regulations, an original and fourteen copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

11. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

Adopted: April 10, 1974.

Released: April 15, 1974.

FEDERAL COMMUNICATIONS COMMISSION,

[SEAL] WALLACE E. JOHNSON, Chief, Broadcast Bureau.

[FR Doc.74-9170 Filed 4-19-74;8:45 am]

[47 CFR Part 73]

[Docket No. 19945; RM-2121]

FM BROADCAST STATIONS IN NAPLES, FLORIDA

Table of Assignments; Extension of Time for Filing Comments and Reply Comments

In the matter of amendment of § 73.202(b), Table of assignments, FM Broadcast Stations (Naples, Florida), Docket No. 19945, RM-2121.

1. On February 25, 1974, the Commission adopted a Notice of Proposed Rule Making in the above-entitled proceeding. Publication was given in the FEDERAL REGISTER on March 12, 1974, 39 FR 9553. Comment and reply comment dates are presently April 15 and April 26, respectively.

2. On April 10, 1974, Naples Image, Inc., by Counsel, filed a request for ex-

tension of time in which to file comments and reply comments to and including May 15 and May 27, 1974, respectively. Counsel states that because of a heavy hearing schedule it cannot complete the compilation of meaningful data in the public interest in this proceeding.

3. We are of the view that the public interest would be served by extending the time in this proceeding. Accordingly, it is ordered, That the dates for filing comments and reply comments are extended to and including May 15 and May 27, 1974, respectively.

4. This action is taken pursuant to authority found in sections 4(i), 5(d)(1) and 303(r) of the Communications Act of 1934, as amended, and § 0.281 of the Commission's rules.

Adopted: April 12, 1974.

Released: April 15, 1974.

FEDERAL COMMUNICATIONS
COMMISSION,

[SEAL] WALLACE E. JOHNSON,
Chief, Broadcast Bureau.

[FR Doc.74-9177 Filed 4-19-74; 8:45 am]

[47 CFR Part 73]

[Docket No. 19937; FCC 74-364]

FM BROADCAST STATIONS IN
RED OAK, IOWA

Proposed Table of Assignments;
Termination of Proceeding

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations. (Red Oak, Iowa), Docket No. 19937, RM-2119.

1. On February 13, 1974, the Commission issued a Notice of Proposed Rule Making, 39 FR 7181, in the above-entitled matter, in a petition by Red Oak Broadcasting Co., Inc., proposing the assignment of FM Channel 249A to Red Oak, Iowa, by reassigning this channel from Nebraska City, Nebraska, to Red Oak, Iowa. Channel 249A was assigned to Nebraska City in 1963 but never occupied. No replacement for the Nebraska City Channel 249A assignment, the only FM channel there assigned, was proposed. Brief supporting comments were filed by the petitioner which incorporate its prior petition on the proposal and reaffirm that it intends to apply therefor and build the station if authorized. Comments opposing the proposal were filed by The KNCY Radio Corporation, licensee of daytime-only AM Station KNCY, Nebraska City, Nebraska (KNCY Radio) which informs that it has already taken steps looking toward the preparation and filing of an application for Channel 249A in Nebraska City. It further states that prior to the release of the Notice of Proposed Rule Making it consulted with its communications counsel about the manner of conducting surveys and various aspects relating to the preparation of the FM application.

2. Nebraska City (population 7,441)¹ is the seat of Otoe County (population 15,576), and is located approximately 40

miles from Omaha. Red Oak, Iowa (population 6,210), is the seat of Montgomery County (population 12,781) and is located approximately 40 miles from Omaha. While both communities are without an FM outlet, each has a local AM radio station (daytime only).

3. KNCY Radio in opposition contends that the petitioner's case for moving 249A from Nebraska City, Nebraska, to Red Oak, Iowa, rests on the fact that the proposed assignment will provide a first FM service to portions of Montgomery County, as well as provide a first FM service to Red Oak, Iowa. Opponent points out that two fulltime AM stations (KFNJ and KMA) licensed to Shenandoah, Iowa, located approximately 20 miles from Red Oak provide in-state service to Red Oak and in addition there is a daytime-only station (KJAN) and a fulltime FM station (KJAN-FM), licensed to Atlantic, Iowa, located approximately 30 miles from Red Oak. Opponent contends that Nebraska City is the larger community; that there is now a demand for the use of the channel at Nebraska City and prospect for Nebraska City and Otoe County to have a first local FM service as evidenced by the application now under preparation.

4. While Nebraska City would normally warrant a first FM assignment over Red Oak on the basis of size, we felt it would be in the public interest to consider the petitioner's proposal in rule making, considering that Channel 249A has been assigned to Nebraska City since 1963 and that there still appeared no evidence of any interest in using the channel for a local FM service there. We now believe, however, in view of this record and the steps taken by The KNCY Radio Corporation in preparation for the Nebraska City Channel 249A assignment which clearly demonstrate an interest in using this assignment at Nebraska City, that our assignment objectives and the public interest are best served by retaining the channel in the larger community of Nebraska City at this time. Should it later appear, however, that there is undue delay in activating the channel at Nebraska City because of lack of diligence in prosecuting an application for the channel or in building an authorized station, we would consider a further petition to move the channel to Red Oak, Iowa to serve a need there.

5. It is ordered, That the proposal in this proceeding to assign Channel 249A to Red Oak, Iowa, by deleting it from Nebraska City, Nebraska, IS DENIED without prejudice to the filing of a future request to assign a channel to Red Oak consistent with applicable Commission requirements.

6. It is further ordered, That this proceeding is terminated.

Adopted: April 9, 1974.

Released: April 16, 1974.

FEDERAL COMMUNICATIONS
COMMISSION,

[SEAL] VINCENT J. MULLINS,
Secretary.

[FR Doc.74-9168 Filed 4-19-74; 8:45 am]

[47 CFR Part 73]

[Docket No. 20016; FCC 74-381]

FM BROADCAST STATIONS

AM-FM Program Duplication

In the matter of AM-FM program duplication, Docket No. 20016.

1. The Commission hereby seeks comments on proposed amendment of § 73.242 of the Commission's Rules governing duplication of AM programming on commonly owned FM stations in communities of more than 100,000 population in the same local area.

2. A decade has passed since the Commission began its inquiry into the possibility of limiting the amount of AM station programming that might be duplicated by an FM station. The rule itself has been in effect for a number of years, and even though it has not been changed since it was adopted, circumstances have changed notably. The premises on which the rule was based have not changed, nor have the goals we wished to reach.¹ However, the change in circumstances suggests that the rule may no longer represent a fully satisfactory effort to reach these goals. Thus, we intend to explore whether the rule as it now stands still reflects a proper balance of the various interests involved or whether it needs to be amended to take the current situation into proper account. The information now before us, which will be discussed shortly, suggests a need to extend the coverage of the rule to smaller communities and/or to increase the amount of non-duplicated programming that some or all of the now affected stations must carry. In order to place this matter in perspective, we shall review the current rule and the documents pertaining to its adoption.

3. Examination of the matter of AM-FM program duplication began with the Commission's Notice of Proposed Rule Making in Docket No. 15084, FCC 63-468, 25 R.R. 1615 (1963). While the central focus of that Notice was on AM assignment standards, paragraphs 11-22 (at 1620 et seq.) dealt with the inter-relationship of AM and FM broadcasting and in particular the practice of AM-FM program duplication. The view tentatively expressed was that such duplication had served its purpose and the time was ripe to begin a process of ending or limiting such duplication. In part, this view was premised on a recognition of the fact that AM and FM were becoming joint components of a total aural service. With this in mind, the Commission was all the more concerned that duplication was wasteful of spectrum space. Accordingly, the Commission proposed a limit of 50 percent of the amount of AM programming that an FM station might duplicate, a limit which would apply to communities over 100,000 which had no vacant FM channels.

¹ The rule was based on essentially three considerations: (1) The inherent inefficiency of duplication, (2) the limiting effect on independent FM development and the ability to compete, and (3) the stimulus to FM set sales which separate programming would provide.

¹ All population figures are taken from the 1970 U.S. Census unless otherwise indicated.

4. In the Commission's Report and Order, 45 F.C.C. 1515 (1964), the current § 73.242 was adopted. It differed little from the proposal, with the exception that the presence of a vacant channel in a community no longer was to have significance.² Duplication was defined to include the 24-hour periods before and after AM broadcast as well as simultaneous duplication. Computation was to be on an "average week" basis, and the rule was not limited to cases where the AM and FM stations were licensed to the same city, so long as they were in the same local area. In computing the amount of duplication, special events, even if carried on both stations, were to be treated as separate programming. News, sports and public affairs were not exempted, but the 50 percent duplication permitted was thought to be more than sufficient to permit continuation of duplication for these program categories.

5. Various petitions for reconsideration were filed. Except for a delay in the effective date of the rule, the petitions were denied—45 F.C.C. 2092 (1965). In so doing, the Commission rejected a series of arguments made by the various parties. We shall discuss these points because they might well again be raised as to any extension of the current provisions of the rule. Absent data to establish that our prior judgments no longer apply, we do not expect to again have to cover the same territory. Rather, parties offering comments should direct their attention to the anticipatable impact of revision of the rule and not attempt to re-litigate settled issues.

6. In the Memorandum Opinion and Order denying the petitions, the Commission dealt with a number of issues. One argument was that the Commission was usurping the licensee's judgment in how best to respond to local needs. This the Commission rejected as without substance in view of the mandate of the provisions of section 303 of the Communications Act to classify stations and specify the nature of the service to be rendered, and most importantly to encourage the more efficient use of radio. Duplication was considered inherently wasteful and inefficient and as such to be permitted only when substantial countervailing benefits were offered. The balance was struck at 50 percent and 100,000 population. Nor was the Commission persuaded by economic arguments about increased costs, technical arguments about how FM supplements AM coverage, programming arguments that increased costs lead to reduced program quality and finally the argument that the rule applied to the very cities with the most radio choices and hence in least need of the rule. Even so, the Commission acknowledged the likelihood of short-term detrimental economic impact, but this was a matter the Commission said would be treated pursuant to individual requests for tem-

porary relief under paragraph (c) of the rule.

7. The Commission adopted another Memorandum Opinion and Order the next year, 2 F.C.C. 2d 833 (1966), dealing with the large number of requests for exemption which had been filed. In addition to acting on these requests the document also set forth certain interpretations of the rule and again delayed the effective date. Even though the consideration in that document focused mostly on individual circumstances rather than those relating to all affected parties, one interpretation requires mention here: the Commission expressed a view that a large seasonal swing, even if it averaged out to 50 percent yearly (on a weekly basis) was not the result the rule contemplated. Rather, the Commission observed that ordinarily 30 percent separate programming in any week was to be considered as a minimum. This was thought to provide enough flexibility. We mention this point since we may wish to incorporate this (or a similar provision) in the rule itself.

8. This discussion brings us to the present and our belief that it is time to examine the situation anew and to determine if the rule should be modified. The operative facts have changed greatly in a number of respects. In the last 10 years the number of independent FM stations has doubled, average revenues per independent FM station have almost quadrupled and their total revenues have increased seven fold. The percentage of independent FM stations making a profit has also climbed significantly. Finally FM set penetration has proceeded apace. Moreover, it appears that as more separate programming was offered, more listened, and as more listened, revenues increased and so perhaps more were encouraged to program independently. We think it time to consider providing still further encouragement in this process.

9. When we adopted the cut-off of 100,000 population, most channels assigned to communities of such size or greater were or soon would be in use, but for smaller ones, the same was not true. Now, however, there are multiple filings for FM channels in communities even under 10,000. There are few channels available to places over 25,000 and virtually none to ones over 50,000. Therefore, we now invite comments on whether there should be a change in the cut-off, and if so, what a proper cut-off might be. If, for example, 50,000 were used as the cut-off, this would add 240 communities to the list of 156 now affected and increase the total population of the cities covered by the rule from 56,518,804 to 73,258,934.³

³Of course the community of license population figure is not reflective of station coverage, for reception service extends to areas outside the city of license. Even in cities near the 50,000 level, the reflective population served is usually two to five times the city figure. Thus, we are not dealing with the possibility of applying a rule to a station serving just 50,000 persons, for that would not be the case. Using sample figures from cities near 50,000 population, the number of persons reached runs from 100,000 to 1,417,000.

10. What then for stations already under the rule, i.e., stations in communities of over 100,000 population? For such stations we propose a possible strengthening of the rule to prohibit all duplication except for news and public affairs. There are two reasons for such an exemption. Both news and public affairs have time as an important factor and both are crucial to the function of a democratic society. While for sports, even if time is of importance, the need for duplication does not rest on a similar foundation. With sports programming the countervailing benefits do not overcome the inherent wastefulness of duplication. Although data are lacking (something we hope this proceeding can help correct) we suspect that many stations in communities of over 100,000 population are already in compliance with the proposal or are close to it. In any event, the need for duplication as it once existed may no longer obtain, and thus we wish to consider a second step which will more accurately reflect the current state of FM development.

11. Commenting parties need not restrict themselves to any particular population or percentage figures. If they wish to suggest others, they should do so and in so doing indicate why they believe that our suggested figures are not appropriate.⁴ We also wish commenting parties to consider a possible rule which would encourage extended hours of broadcasting by not counting the period of midnight to 6 a.m. in computing the amount of non-duplication required. Thus, assuming both the AM and FM stations are full-time and if a 50 percent limit prevailed overall, 12 hours would be separately programmed on the FM. If the above approach were used excluding the midnight-6 a.m. period would leave 18 hours and hence 9 hours of separate programming as the requirement. We would not favor such an approach if it led to a reduction in separate programming as would be the case if many affected stations already operate 24 hours a day. Data from the parties could be helpful in evaluating this problem.

12. Comments are invited on any pertinent aspect of the issues here involved. The Commission will not be limited to the approach tentatively expressed, but rather wishes to explore other possibilities which might better further the underlying goals expressed a decade ago. Thus the central issue is how the Commission might best proceed to attain these objectives. Since some of the material to be submitted may require research or the compilation of statistical information we shall provide 90 days for the submission of comments and 30 days for the submission of reply comments.

13. In accordance with the above discussion and pursuant to sections 4(i), 303 (a), (b), (g), and (r) of the Communications Act of 1934, as amended, rulemaking is proposed.

⁴Parties may also wish to discuss non-population based guidelines for extending the rule, but in so doing they should offer suggestions on how such an approach might be efficiently administered.

²The Commission believed that few such channels would remain, as the demand seemed essentially equal to the supply, and that the rule could be more effectively administered without this provision.

14. Pursuant to applicable procedures set forth in § 1.415 of the Commission's rules, interested persons may file comments on or before July 25, 1974, and reply comments on or before August 26, 1974. All relevant and timely comments and reply comments will be considered by the Commission before final action is taken in this proceeding.

15. In reaching its decision in this proceeding, the Commission may also take into account other relevant information before it, in addition to the specific comments invited by this Notice.

16. In accordance with the provisions of § 1.419 of the Rules, and original and 14 copies of all comments, replies, pleadings, briefs, and other documents shall be furnished the Commission. All filings made in this proceeding will be made available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street NW., Washington, D.C.

Adopted: April 10, 1974.

Released: April 16, 1974.

FEDERAL COMMUNICATIONS
COMMISSION,

[SEAL] VINCENT J. MULLINS,
Secretary.

[FB Doc. 74-9173 Filed 4-19-74; 8:45 am]

[47 CFR Part 73]

[Docket No. 20012; FCC 74-367]

FM BROADCAST STATIONS

Transmission of Non-Aural Signals

In the matter of amendment of Part 73 of the Commission's Rules and Regulations concerning the transmission of non-aural signals on an FM broadcast station subcarrier pursuant to a subsidiary communications authorization, Docket No. 20012, RM-1927.

1. The rules governing the transmission of programs on a subcarrier of an FM broadcasting station, set forth in § 73.293, place no restriction on the nature of the signal used to modulate the subcarrier for the provision of the limited public services which are authorized. However, it is clear that when these rules were formulated, the immediate aim was to accommodate an aural (voice and music) service, and any special policy or technical questions which might have required solution if non-aural transmissions were contemplated were given no consideration. Accordingly, the Commission customarily has granted regular SCA authorizations only in cases where aural service was proposed.

2. Since about 1965 various proposals have been made to utilize the FM subcarrier for the conveyance of information prepared, transmitted, and presented at the receiving point for visual, rather than aural perception by the user. In a number of instances the Commission has granted experimental authorizations for the testing of these techniques, and the technical feasibility of providing non-aural services of vari-

ous kinds on the SCA subcarrier has been generally established.

3. The Commission has determined quite recently that the subcarrier transmission of information for visual as well as aural reception by the specialized groups which the FM station licensee may serve pursuant to a Subsidiary Communications Authorization is fully consistent with the intended purpose of the SCA and, as a matter of policy, should be permitted.²

4. This Notice, therefore, deals primarily with the technical aspects of non-aural SCA transmissions, and, in that context, examines two questions: (1) what amendments to § 73.319 of the rules—the engineering standards for SCA transmissions—become necessary or desirable when such transmissions are authorized on a regular basis, and (2) whether the specific parameters of the non-aural signals should be established by rule.

5. By this Notice, we are also responding to a petition (RM-1927) of John R. Porterfield, filed on February 18, 1972, which, among other things, seeks amendment of § 73.293 of the Rules so as to affirmatively permit SCA facsimile transmissions. This particular proposal obviously is encompassed in the broader approach to non-aural subcarrier transmissions contemplated herein. Other rule amendments proposed by Mr. Porterfield will be disclosed and considered in context in the following discussion.

6. In developing engineering rules applicable to non-aural SCA transmissions, it appears we can take either of two approaches:

(a) We can attempt to classify the various systems, and develop detailed rules defining the structure of the transmitted signals, at least for the major categories of such transmissions; or

(b) We can follow the far simpler course of amending the rules only to the extent of adopting such technical limitation as appear necessary to insure that non-aural SCA transmissions will neither adversely affect the broadcast service of the FM station emitting the signals, nor increase the level of potential interference to other FM stations, but otherwise allow the SCA holder to provide subcarrier service by such means as appears feasible and suitable in each case.

7. The promulgation of standards for a particular system of non-aural transmission might be expected to have the effect of standardizing the kind of equipment employed by users of the system, and the lowering of equipment costs to all users. Conversely, such standardization would limit flexibility of use, and, in the particular case may serve to preclude the rendition of an SCA service which otherwise might appear technically and economically feasible.

8. Illustrative of the latter point is Mr. Porterfield's proposal to provide an SCA facsimile service to persons who

possess facsimile transceivers designed to operate primarily with land line telephones. He states that there are presently about 10,000 of these units in service. They are produced by several different manufacturers, and as among the various makes, utilize facsimile signals which differ somewhat in configuration. Mr. Porterfield states that these transceivers might be wired to SCA receivers, and an FM station, equipped to provide facsimile programming under standards compatible with the transceivers in his area, or, alternatively, to various groups of transceivers operating under differing standards, could provide a highly desirable subscriber service.²

9. It is his contention that the development of subscriber services to specialized groups has heretofore been hampered by two factors:

(1) Scheduling—the difficulty of choosing any particular time when all members of a specialized group, or even a majority of the group, will be able to audit an aural program.

(2) The lack of a printed transcript of the program material.

He believes that if the specialized program material were transmitted and received in facsimile, for perusal by the recipient at his leisure, these impediments would be removed, and specialized subscriber services might be expected to expand.

10. It is apparent that the rendition of a service of the type described above would be severely restricted, if not made impossible, if the FM licensee were required to adhere to any single prescribed set of facsimile standards. In this connection, Mr. Porterfield points to Section 73.318 of the rules, which prescribes engineering standards for facsimile transmission. These standards presumably would have to be observed if facsimile programs were transmitted pursuant to an SCA, and their existence in the rules in their present form constitutes a bar to the implementation of the kind of facsimile service which he envisages.

11. In any case, he avers, the standards of § 73.318 are obsolete. They were adopted in 1948, a number of years prior to the adoption of the present SCA rules, and, together with § 73.206, which permits main channel transmission of facsimile during periods not devoted to regular programming, as well as multiplex facsimile at all times, were intended to make realizable a concept, extant for many years, of a "radio newspaper" for the general public. The effective implementation of such a concept obviously required the employment of uniform standards for all transmissions. However, the "radio newspaper" never became a practical reality. Mr. Porterfield states that the last experimental "newspaper" transmission took place in 1948 (appar-

² The transceivers would be brought into operation selectively by tones transmitted on a subcarrier, according to the specialized group to which the subscriber belonged, and the facsimile standards utilized by the particular transceiver.

¹ WFTL Broadcasting Co. (FCC 74-282) adopted March 14, 1974.

ently at about the time the facsimile rules were adopted).

12. In view of this situation, and to afford the complete flexibility as to transmission standards which would be required to accommodate a service such as he proposes, he urges that the facsimile standards be deleted. He would include in § 73.318 only a restriction on the bandwidth of the facsimile signal, and a requirement that its transmission comply with the SCA engineering standards (§ 73.319).

13. We believe it quite likely, if the facsimile engineering standards are retained in the rules, that they should be modernized. However, the weight of opinion may be with Mr. Porterfield and against the adoption or retention of any rules which define the configuration of the facsimile signal.

14. If we decide to retain facsimile standards, the considerations which dictate this course of action would appear to be applicable generally to other types of non-aural transmissions, and consideration should be given to the establishment of engineering standards, at least for the major categories of these transmissions.

15. Judging from the kinds of experimental authorizations given, and from general interest expressed, the majority of non-aural types of transmissions fall generally into one of three categories:

- (a) Facsimile
- (b) Slow-scan television
- (c) Teletype and teleprinter

In addition to these basic kinds of non-aural signals, there are certain other systems intended to present information in visual form, which do not fall neatly in any of these categories. An example of these is the electrowriter, a system in which the motion and position of a stylus, used for writing or drawing, is converted into electrical signals whose frequencies vary in accordance with the position of the stylus. These signals after transmission, are used at a receiver to control a pen whose motion and relative position duplicates that of the transmitting stylus. Thus, the graphic material is reproduced at the receiver simultaneously with its preparation at the transmitting point. To the extent that this system will provide a replica of transmitted graphic material in record form, it might be regarded as a specialized form of facsimile, even though the scanning methods of conventional facsimile are not employed.

16. We see no good reason why such systems should not be permitted, and do not propose to adopt rules which would exclude them. Insofar as the major categories of non-aural transmission are concerned, the teletypewriter and teleprinter codes appear well established, and we see little need for Commission action toward standardization in this category. However, we request comments with respect to the desirability of establishing standards for facsimile and slow-scan television. When a party favors such standardization, we invite suggestions on the actual content of such standards.

17. If, on the basis of the comments filed and the study of other relevant in-

formation, the Commission determines that the adoption of rules establishing engineering standards for facsimile and slow-scan television for SCA transmission is in the public interest, a further notice will be issued soliciting comments on specific standards.

18. On the other hand, should we not adopt such standards for SCA use, and in the absence of any indication that the facsimile standards of § 73.318 have any other present application, we contemplate action looking toward the deletion of those standards. We also will undertake any necessary amendment of SCA engineering standards contained in § 73.319. With respect to the latter section, we consider at least one addition to be necessary—the specification of the permissible base band width of the non-aural signal. Of course, other technical requirements may be desirable, and we solicit comments in this regard.

19. The potentiality of the SCA signal for creating cross talk in the main channel signal, or for producing emissions outside of the normal transmission channel, of course, is affected by two major factors, the deviation of the FM signal by the SCA subcarrier, and the composition of the signal which modulates the subcarrier. The subcarrier deviation can be monitored and controlled by the station operator. The base band occupied by the modulating signal depends on the characteristics of the signal, which, to avoid possible adverse effects, often must be modified by filtering before application to the subcarrier. That such a technique must be applied has been recognized by experimenters with non-aural signals. While the necessary filter might be interposed between the non-aural apparatus and the subcarrier generator, we assume, in most cases, it is included in the non-aural apparatus itself.

20. Considering the extremely broad band which might be occupied by some non-aural signals ("slow scan" television is, after all, a relative term, and some systems of this nature which scan an image at a rate which is "slow", compared to conventional television might be, in terms of occupied bandwidth, entirely unsuitable for SCA transmission), we believe that reliance should not be placed on the equipment manufacturer to decide, in each case, what base band limitations are appropriate.

21. We therefore contemplate the adoption of a rule which will limit the band width of the non-aural signal used to modulate the subcarrier, and which would specify the permissible level of signal components falling outside the permitted pass band. Since a station licensee normally would not have the means for determining whether the non-aural signal generator which he desires to employ meets the requirements of such a rule, we are considering the desirability of a rule which would preclude the employment by an FM licensee of any apparatus for the generation of a non-aural signal which was not furnished by its manufacturer with a written certification that its output fully complies with such band width limitations the rules may specify.

22. In addition to the rule amendments which we have previously discussed, Mr. Porterfield also has proposed an amendment of § 73.293(c). He would modify this rule, which limits periods of SCA operation to those during which the main channel is programmed, to permit SCA facsimile transmissions "at any time between midnight and 7 a.m., and for not more than one hour between 7 a.m. and midnight, without main channel programming." The rendition of the kind of facsimile service which he proposes would be facilitated by such a rule amendment, since it would permit the use of facsimile transceivers for the recording of the SCA transmissions during hours when the transceivers would be unlikely to be handling communications over the telephone system.

23. While this Notice invites comments which relate to other aspects of Mr. Porterfield's proposal, and we are therefore, in effect, granting his petition for rulemaking insofar as it relates to these matters, we are denying it with respect to the proposal just outlined. The rule amendment sought would permit the operation of an FM broadcast station solely for the provision of a service which, while it has been found to be "broadcast related" may be, in many respects, indistinguishable from services provided by stations operating on non-broadcast frequencies. A primary justification for authorizing a broadcast station to conduct such a service pursuant to an SCA is that it may be rendered by the station at the same time the station is performing its essential function—the provision of a broadcasting service to the general public. The subcarrier service is at all times secondary and subordinate to the main carrier service, and is consistently so treated in our rules.

24. Any change in our rules which would tend to divorce the SCA service from the broadcasting service, and permit it to be provided separately, even if only for a portion of each day, would seriously erode, if not entirely eliminate an element basic to the whole SCA concept. Accordingly, we consider it futile to explore this portion of Mr. Porterfield's proposal in a rule making proceeding.

25. In the light of the above, comments are requested on the following:

(a) What, if any, engineering standards should be adopted for the configuration of the major categories of non-aural signals authorized for SCA transmission (particularly for facsimile and slow-scan television)?

(b) Is any useful purpose to be served by the retention in the rules of the present provisions for simplex facsimile transmissions in § 73.266, or, unless the imposition of SCA signal standards is decided upon, of the facsimile standards of § 73.318 in their present, or in some amended form?

(c) What base band limitations shall be included in § 73.319 to insure that non-aural signals employed for subcarrier transmission will not adversely affect main carrier or stereo subcarrier transmission or cause emissions of appreciable magnitude outside the normal

frequency spectrum of the FM station? Are any other technical restrictions necessary or desirable?

26. Pursuant to applicable procedures set forth in § 1.415 of the Commission's Rules, interested parties may file comments on or before May 23, 1974, and reply comments on or before June 3, 1974. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may also take into account other relevant information before it, in addition to the specific comments requested by this notice.

27. In accordance with the provisions of § 1.419 of the rules, an original and 14 copies of all comments, reply comments, pleadings, briefs, and other documents shall be furnished the Commission. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its Headquarters, 1919 M Street, NW., Washington, D.C.

Adopted: April 9, 1974.

Released: April 16, 1974.

FEDERAL COMMUNICATIONS
COMMISSION,

[SEAL] VINCENT J. MULLINS,
Secretary.

[FR Doc. 74-9172 Filed 4-19-74; 8:45 am]

[47 CFR Parts 89, 91, 93]

[Docket No. 20006; FCC 74-352]

HIGH FREQUENCY TRANSMITTER
OPERATORS

Radiotelephone License Requirements

In the matter of amendment of Parts 89, 91 and 93 of the Commission's Rules and Regulations to eliminate the requirement that an operator of a high frequency transmitter possess a radiotelephone operator's license of any class, Docket No. 20006.

1. The Commission has under consideration amendment of its Rules in the above-entitled matter. This is prompted in part by a petition for rule waiver submitted by the Utilities Telecommunications Council (UTC) requesting a waiver of § 91.154(e) of the Rules to permit electric utilities companies to conduct field trials of the Electric Power Pool Control Network in the three to nine MHz band with employees who do not hold commercial radio operator's licenses.

2. Sections 89.163, 91.154, and 93.154 of the Commission's Rules require that operators of stations transmitting on frequencies below 25 MHz (the high frequency (HF) band) hold a commercial radio operator's license. Almost without exception, such operators hold the Restricted Radiotelephone Operator Permit, which is the lowest class of the radiotelephone operator license.

3. The Restricted Radiotelephone Operator's Permit is obtained by a simple application on the part of the applicant and the submission of a processing fee.

The operating authority conferred is very limited, enabling the licensee to perform a minimal number of functions essential to the rendition of service of the station operated (such as on-off keying of the transmitter and speaking through the microphone). Such operators are prohibited from making any technical adjustments which may result in improper transmitter operation.

4. In 1947, at the International Telecommunication Conference held in Atlantic City, New Jersey, proposals embodying operators' qualifications and certificates underwent substantial revision in order to effect the modernization and simplification desired by the participating nations. It was decided that operator certificates would be required only of persons operating ship and aircraft radiotelegraph and radiotelephone stations and would not be necessary for the operation of other mobile stations. There is presently no international agreement requiring that the operators of fixed or land mobile stations be licensed.

5. Due to the long-distance propagation characteristics of the HF band, it has been Commission policy to license operators of such stations in order to minimize the interference potential due to improper operation. It is apparent, however, that the number of stations causing interference is negligible and that when interference is caused, it is almost always due to a technical, rather than an operational violation on the part of the licensee.

6. In addition, the quality and reliability of radio transmitters has improved considerably so that constant transmitter maintenance is not required. Controls relating to frequency, power, or modulation adjustment, which several decades ago were normally located on the exterior of the transmitter, have been relocated to the interior, restricting their accessibility to unauthorized service personnel. This is true with respect to transmitters operating above as well as below 25 MHz. Restricted Radiotelephone Operator licensees are not authorized to make transmitter adjustments of that nature.

7. Thus, it appears that the licensed operator requirements in the private land mobile radio services for radiotelephone systems below 25 MHz are no longer necessary and that the provisions of section 318 of the Communications Act should be waived, and that these licensed operator requirements should be deleted.

8. Accordingly, we propose to amend Parts 89, 91, and 93 of our Rules to eliminate the requirement that operators of base or mobile stations transmitting on frequencies below 25 MHz, utilizing radiotelephony, hold a commercial radio operator's license or permit. In the interim, pending final resolution of this matter, the Petition for Rule Waiver submitted by the UTC requesting exemption of radio operators conducting field trials of the Electric Power Pool Network in the three to nine MHz band,

from the requirements of § 91.154(e), is granted.

9. Authority for the proposed amendments is contained in sections 4(i), 303, and 318 of the Communications Act of 1934, as amended. Pursuant to applicable procedures set forth in § 1.415 of the Commission's Rules, interested parties may file comments on or before June 24, 1974, and reply comments on or before July 8, 1974. Relevant and timely comments and reply comments will be considered by the Commission before final action in this proceeding. In reaching its decision, the Commission may also take into account other relevant information before it, in addition to the specific comments invited by this Notice.

10. In accordance with the provisions of § 1.419 of the Commission's Rules, an original and fourteen copies of all statements, briefs, or comments filed shall be furnished the Commission. Responses will be available for public inspection during regular business hours in the Commission's Public Reference Room at its headquarters in Washington, D.C.

Adopted: April 9, 1974.

Released: April 16, 1974.

FEDERAL COMMUNICATIONS
COMMISSION,

[SEAL] VINCENT J. MULLINS,
Secretary.

Part 89 of the Commission's rules is amended as follows:

1. Section 89.163(a)(1) is amended to read as follows:

§ 89.163 Operator requirements.

(a) Operation during the course of normal rendition of service-radiotelephone. (1) The following classes of stations may be operated by an unlicensed person, if authorized to do so by the station licensee:

* * * * *

Part 91 of the Commission's Rules is amended as follows.

1. Section 91.154(c) is amended and paragraph (d) and (e) deleted and designated as reserved to read as follows:

§ 91.154 Operator requirements.

* * * * *

(c) Except under the circumstances specified in paragraphs (a) and (b) of this section, and except as limited by paragraphs (g) and (h) of this section, an unlicensed person, after being authorized by the station licensee to do so, may operate from a control point a mobile, base or fixed station, or from a dispatch point a base or fixed station during the course of normal rendition of service.

(d) [Reserved]

(e) [Reserved]

* * * * *

Part 93 of the Commission's Rules is amended as follows.

1. Section 93.154(c) is amended and paragraphs (d) and (e) deleted and designated as reserved to read as follows:

§ 93.154 Operator requirements.

(c) Except under the circumstances specified in paragraphs (a) and (b) of this section, and except as limited by paragraphs (g) and (h) of this section, an unlicensed person, after being authorized to do so by the station licensee, may operate from a control point a mobile, base, or fixed station, or from a dispatch point a base or fixed station, during the course of normal rendition of service.

(d) [Reserved]

(e) [Reserved]

[FR Doc.74-9174 Filed 4-19-74; 8:45 am]

FEDERAL POWER COMMISSION

[18 CFR 3, 260]

[Docket No. RM74-16]

NATURAL GAS COMPANIES; ANNUAL REPORT OF PROVED DOMESTIC GAS RESERVES; FPC FORM NO. 40

Notice of Proposed Rulemaking

APRIL 15, 1974.

Notice is hereby given, pursuant to section 553 of title 5 of U.S.C. and sections 8, 10, 14, and 16 of the Natural Gas Act (52 Stat. 825, 15 U.S.C. 717g; 52 Stat. 826, 15 U.S.C. 717i; 52 Stat. 828, 15 U.S.C. 717m; 52 Stat. 830, 15 U.S.C. 717o) that the Commission proposes to add a new § 260.13 to Part 260, Statements and Reports (Schedules), Subchapter G—Approved Forms, Natural Gas Act, 18 CFR Chapter I, to require the filing by each person found by the Commission to be a "natural-gas company" within the meaning of the Natural Gas Act or an annual report of proved domestic gas reserves, including those of any affiliate (associate) or subsidiary on a new form FPC Form 40 (Attachment A).¹

Natural gas, which provides approximately 1/3 of our nation's energy, is currently in short supply and unable to satisfy all consumer demand. Curtailments this winter of gas deliveries to parts of the industrial sector of our economy have adversely affected the national welfare. The likelihood of supply shortages continuing into the future is apparent. The natural gas shortage that has resulted in interruption of contracted firm deliveries of natural gas since 1970 and the national energy emergency in general make it necessary that the Commission, in order to discharge more effectively its regulatory responsibilities, have an accurate and current report of the natural gas reserves, including those of any affiliate (associate) or subsidiary, of all persons found by the Commission to be natural-gas companies operating in the United States, including Alaska and the offshore continental shelf.

¹ Attachment A filed as part of the original document.

The National Gas Reserves Study² which was the first independent government sponsored estimate of U.S. proved natural gas reserves estimated the proved reserves of natural gas of the United States, including Alaska, and the offshore continental shelf to be 258.6 trillion cubic feet as of December 31, 1970, with a reserves to production (R/P) ratio of 11.8 years. Since completion of the National Gas Reserves Study, depletion of the national proved gas reserves inventory has continued. Based on A.G.A.³ reports it is estimated that the national reserves to production (R/P) ratio has declined by about 15 percent from the end of 1970 to the end of 1973. The National Gas Reserves Study examined a number of important facets pertaining to the nation's proved gas reserves, and the Study provided the first complete list of all the nation's gas-producing fields. However, while the study provided the first field list and the first independent and reliable estimate of the nation's proved reserves at one point in time, it did not provide details that would permit analysis of gas reserve distribution by geographical area, or gas reserve volumes by status of commitment (committed, under negotiation, uncommitted) or by company ownership.

Currently, FPC Form 15 is utilized by the Commission to gather reserves data on a continuing and uniform basis and to provide an indication of the reserves available to the nation's consumers.⁴ These gas reserves data are filed annually, but report only the gas reserves claimed by the interstate pipeline companies to be available to them. This information is necessary for the Commission to fulfill its statutory responsibility under the Natural Gas Act regarding the gas reserves posture of the pipeline companies subject to its jurisdiction and is an important factor in pipeline certification proceedings.

The proposed rule and form will provide more extensive information on gas reserves and thereby enable the Commission to make policy decisions, and adjustments to these decisions, based upon close and timely observation of trends and rates of change in the mix in the reported reserve information. Additionally, the rulemaking will provide reserves data useful for economic and regional analysis and predictions of supplies available.

The proposed form, FPC Form 40, is designed to include data on all proved reserves of the reporting company. The Commission proposes to collect data on

² The National Gas Reserves Study (an FPC staff report published May 1973 and revised in September 1973) was conducted by the Commission staff with the assistance of the United States Geological Survey, the Office of Management and Budget, the Bureau of Census, the Department of the Navy, various state regulatory and conservation agencies, and the voluntary cooperation of industry.

³ American Gas Association.

⁴ FPC Form No. 15 (18 CFR 260.7) (18 CFR 260.2a).

company owned estimated proved domestic reserves of all natural gas companies, including those of any affiliate (associate) or subsidiary, on a continuous basis, through an annual reporting requirement. The reported reserve estimates will be subject to audit by the Commission staff.

The comprehensive field list generated in the NGRS as revised, will be the official list of field names for reporting purposes on the new forms. The reserves to be reported by the official gas field name, are the company's owned interest in the reserves plus its proportionate part of any royalty or overriding royalty interest. The data will be collected on a reservoir basis but where production is commingled and cannot be credited to an individual reservoir, the total data for grouped reservoirs may be shown with individual reservoir names listed. The company's total interest in the reserves of the group of reservoirs should be reported as a total figure. Production and reserves data will be collected on a reservoir basis that will reflect annual changes in reserves. The report will also identify reservoirs in which companies claimed reserves, but from which there was no production during the report year.

The proposed report (Attachment A, proposed FPC Form 40) will consist of four schedules. Schedule A is a summary schedule of proved reserves for the reporting company. Schedule B is a report of proved reserves by field and reservoir and shut-in reserves, Schedule B-1 shows the proved gas reserves under certain assumptions and Schedule C is a report of changes in proved reserves by company and state. Schedule C will not be completed for the first reporting year.

Part I of Schedule A, the summary report by company, reveals the volumes of proved gas reserves by a classification of committed, under negotiation, and uncommitted within the following categories:

- (1) Interstate Contracts.
 - (a) Long Term⁵ For Resale.
 - (b) Short Term⁶ For Resale.
 - (c) Direct Industrial Sales⁷.
 - (d) Warranty Contracts.
- (2) Intrastate Contracts.
 - (a) Long Term⁵ For Resale.
 - (b) Short Term⁶ For Resale.
 - (c) Direct Industrial Sales⁷.
 - (d) Warranty Contracts.
- (3) Company Use.
 - (a) Feedstock⁸.
 - (b) Fuel⁹.

⁵ Excludes gas reserves reported under short-term category.

⁶ See Commission Orders 418, 431, 491A, 491B, and 491C.

⁷ Includes sales to other producers, and electrical utilities.

⁸ One year or longer.

⁹ Less than one year.

⁸ Feedstock is defined as natural gas used as raw material for its chemical properties in creating an end product.

⁹ Fuel use is defined as all gas used by the reporting company other than for feedstock.

- (4) Other (Identify in footnote).
 (5) Company Totals.

Part II of Schedule A summarizes the commitment status of company-owned domestic reserves by type of occurrence (associated, non-associated, solution and combination thereof). Part III of Schedule A summarizes the status of shut-in volumes of proved gas reserve, the number of net shut-in completions, and the acreage on shut-in leases. Part IV of Schedule A summarizes the changes in proved reserves during the report year.

Schedule B shows proved reserves by field and reservoir and will report the type of dedication, the status of commitment, and the type of gas occurrence. Additionally, the company will report by reservoir, the year of discovery, the amount of gas originally in place, the gas production for the report year, the cumulative gas production, the amount of non-recoverable gas, and the proved reserves as of the end of the report year.

For reservoirs with proved reserves, and no gas production at the end of the year, the companies will report on the shut-in status of the reserves. This part of Schedule B identifies the shut-in reservoir by name and shows the number of net completions in the reservoir, the dates of the completions, the acreage attributable to shut-in reservoirs, the approximate dates shut-in wells will be produced, and the year and month of last production from the reservoir.

Schedule B-1 supplements the reserve estimates on Schedule B and shows, by field, the proved reserves that would be added on the basis of different economic and operating assumptions. This schedule also provides for an indication of the assumptions used in estimating the added proved reserves.

Schedule C shows the annual changes in proved reserves by company for each state or production area, including separate data for offshore areas. Specifically reported are the net gains or losses from sales or acquisitions of property, the corrections to previous years' figures, the revisions to reserves estimates, the additions gained through field extensions, new field discoveries and new reservoirs discovered in old fields, and gas production for the reporting year. For California, Louisiana, and New Mexico reports by sub-regions are required; for Texas reports by Railroad Districts are required.

The definition of proved reserves of natural gas to be used in this reporting of reserves follows the definition of the Committee on Natural Gas Reserves of the American Gas Association, which was also used in the National Gas Reserves Study. The use of this generally and widely used definition permits comparison between the various reserve estimates. Therefore, for reporting of domestic proved natural gas reserves, the following definition is to be adhered to:

Proved reserves are the current estimated quantity of natural gas (and natural gas liquids) which analysis of geologic and engineering data demonstrate with reasonable certainty to be recoverable in the future from known oil and gas reservoirs under

existing economic and operating conditions. Reservoirs are considered proved that have demonstrated the ability to produce by either actual production or conclusive formation test.

The area of a reservoir considered proved is that portion delineated by drilling and defined by gas-oil, gas-water contacts or limited by structural deformation or lenticularity of a reservoir. In the absence of fluid contacts, the lowest known structural occurrence of hydrocarbons controls the proved limits of the reservoir. The proved area of a reservoir may also include the adjoining portions not delineated by drilling but which can be evaluated as economically productive on the basis of geological and engineering data available at the time the estimate is made. Therefore, the reserves reported should include total proved reserves which may be in either the drilled or the undrilled portions of the field or reservoir.

Proved gas reserves include those identified in reservoirs regardless of the availability or operative status of production, gathering or transportation facilities.

The adopted definition of proved reserves includes the statement that the estimates be made "under existing economic and operating conditions." The following assumptions relating to economic and operating conditions are to be used in reporting on FPC Form No. 40.

1. A ready market will exist for all volumes of gas produced.
2. The current price paid for gas or the estimated value of the gas for each reservoir (as reported in Schedule B) represents the respondent's best estimate of the present market and field conditions.
3. Environmental regulations will not restrict gas recovery.
4. Compression will be installed (initiated) if and when economically justified.

The first report will cover reserves as of December 31, 1973, and will be filed with the Commission by June 30, 1974. Reports in subsequent years will cover reserves as of the end of the calendar year and will be reported by March 1 of the following year.

The Natural Gas Act provides clear authority for the Commission to require the submission of data on committed and uncommitted reserves by natural-gas companies. Section 8(b) of the Act gives the Commission access to the records of natural-gas companies and directs the companies to furnish to the Commission "any information with respect thereto which the Commission may by order require". Pursuant to section 10 (a) every natural-gas company must file with the Commission such "annual and other periodic or special reports" that the Commission may prescribe to assist it "in the proper administration of this Act". Section 14(b) gives the Commission authority to determine "the adequacy or inadequacy of the gas reserves held or controlled by any natural-gas company, or by anyone on its behalf, including its owned or leased properties on royalty contracts". "For the purpose of any investigation on any other proceeding under this Act", section 14(c) empowers any member of the Commission or any officer designated by it to re-

quire the production of "any books, papers, correspondence, memoranda, contracts, agreements or other records which the Commission finds relevant or material to the inquiry". Finally, section 16 gives the Commission broad power "to perform any and all acts" and to issue "such orders, rules, and regulations as it may find necessary or appropriate to carry out the provisions of this Act".

Another aspect of the disclosure requirement to be imposed on natural-gas companies is the obligation levied upon agencies by the Freedom of Information Act (5 U.S.C. 552) that certain kinds of information be made available to the public. Paragraph (b) (4) of that section provides that this agency is not required to make available matters that are "trade secrets and commercial or financial information obtained from a person and privileged or confidential". Another exception to the disclosure requirement is provided by paragraph (b) (9) for "geological and geophysical information and data, including maps, concerning wells".

We recognize the interest of reporting companies in retaining the proprietary and confidential status of the data requested for Schedules B, B-1, and C. Therefore, Schedules B, B1, and C should be given confidential status by the Commission and kept in Commission files until further ordered by the Commission. The data requested by Schedule A, however, should be placed in the Commission's public files. All data required by the Commission would be subject to the formal demands of Congress and to other Federal agencies through authorized procedures. This policy is in keeping with the policy enunciated by the Commission in a final order issued on October 15, 1973, in *Amerada Hess Corp.*, et al. 50 FPC ----, Docket No. RI74-15, that data collected under an explicit pledge of confidentiality in connection with the National Gas Reserves Study would be kept confidential subject to the formal demands of Congress. Of course, all data collected by the Commission would be available to the Commission for regulatory purposes.

It is proposed that § 3.170 of the General Rules be amended to include Form No. 40.

The amendments proposed herein would be made under authority granted to the Federal Power Commission by the Natural Gas Act, as amended (52 Stat. 830, 15 U.S.C. 717o).

Accordingly, it is proposed to amend § 3.170 of 18 CFR Part 3 by adding paragraph (b) as follows:

§ 3.170 Approved forms, etc.

(b) Form No. 40, Report of Proved Domestic Gas Reserves, Including Those of Any Affiliate (Associate) or Subsidiary, of Each Person Found By the Commission to be a "natural-gas company" within the Meaning of the Natural Gas Act.

Further, it is proposed to amend Part 260, Statements and Reports (Schedules), in Subchapter G—Approved

Forms, Natural Gas Act, 18 CFR Chapter I, by adding new § 260.13, *Report of Proved Domestic Gas Reserves Including Those of Any Affiliate (Associate) or Subsidiary of Each Person Found by the Commission To Be a "natural-gas company" within the Meaning of the Natural Gas Act*, in the form set out in Attachment A hereto, new § 260.13.

§ 260.13 Form No. 40, Report of Proved Domestic Reserves, Including Those of Any Affiliate (Associate) Or Subsidiary of Each Person Found by the Commission To Be a "natural-gas company" within the Meaning of the Natural Gas Act.

(a) The form of Report of Proved Domestic Gas Reserves as FPC Form No. 40, is prescribed.

(b) Each person found by the Commission to be a "natural-gas company" within the meaning of the Natural Gas Act shall prepare and file with the Commission an original and four copies of Report of Proved Domestic Gas Reserves, FPC Form No. 40. The report for the calendar year ending December 31, 1973, shall be filed by June 30, 1974, and thereafter the report for each calendar year ending December 31 shall be filed by March 1 of the following year.

Any interested person may submit to the Federal Power Commission, Washington, D.C. 20426, not later than May 30, 1974, data, views, comments, or suggestions, in writing concerning the proposed regulation and form. An original and 14 conformed copies should be filed with the Commission. Submissions to the Com-

mission should indicate the name and address of the person to whom correspondence in regard to the proposal should be addressed. The Commission will consider all such written submissions before acting on the matter proposed herein. The Staff, in its direction, may grant or deny requests for conference.

The Secretary shall cause prompt publication of this notice to be made in the FEDERAL REGISTER.

By direction of the Commission.¹⁰

KENNETH F. PLUMB,
Secretary.

[FR Doc.74-9104 Filed 4-19-74;8:45 am]

SECURITIES AND EXCHANGE COMMISSION

[17 CFR Part 231]

[Release Nos. 33-5481, 34-10739]

INTERESTS IN REAL ESTATE LIMITED PARTNERSHIPS

Proposed Guide for Preparation of Registration Statements; Extension of Comment Period

On March 1, 1974, the Securities and Exchange Commission announced that it is proposing to adopt Guide 60, "Preparation of Registration Statements Relating to Interests in Real Estate Limited Partnerships," of the Guides for Preparation and Filing of Registration

¹⁰ Commissioner Moody, specially concurring, issued a separate statement which is filed or part of the original document.

Statements under the Securities Act of 1933 ("Act") (Securities Act Release No. 5465, Securities Exchange Act Release No. 10663) (39 FR 10278). A significant number of registration statements relating to public offerings of interests in limited partnerships that intend to invest in real estate have been filed under the Act and questions have arisen in connection with processing such filings. Proposed Guide 60 sets forth certain comments and suggestions which have been developed by the Division of Corporation Finance with respect to real estate offerings and is intended to minimize delays in the review of such filings and to assist those responsible for the preparation of such registration statements.

The time for submitting comments on this matter expires April 15, 1974. However, the Commission has received requests for additional time within which to submit such comments. Accordingly, the comment period has been extended to May 15, 1974. Comments should be addressed to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Washington, D.C. 20549. All such communications will be placed in the public files of the Commission, and should refer to File No. S7-517.

By the Commission.

[SEAL] GEORGE A. FITZSIMMONS,
Secretary.

APRIL 15, 1974.

[FR Doc.74-9139 Filed 4-19-74;8:45 am]

Notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF THE TREASURY

Comptroller of the Currency

COMPTROLLER OF THE CURRENCY'S REGIONAL ADVISORY COMMITTEE ON BANKING POLICIES AND PRACTICES OF THE EIGHTH NATIONAL BANK REGION

Notice of Closed Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), notice is hereby given that a closed meeting of the Comptroller of the Currency's Regional Advisory Committee on Banking Policies and Practices of the Eighth National Bank Region will be held in the Grand Hotel, Point Clear, Alabama on May 3, 1974 at 9 A.M.

The purpose of this meeting is to assist the Regional Administrator and Comptroller of the Currency in a continuing review of bank regulations and policies. The meeting will also apprise agency officials of current conditions and problems banks are experiencing in the Eighth National Bank Region.

It is hereby determined pursuant to section 10(d) of Public Law 92-463 that the meeting is concerned with matters listed in section 552(b) of title 5 of the United States Code and particularly with exceptions (3), (4), and (8) thereof, and is therefore exempt from the provisions of section 10 (a) (1) and (a) (3) of the Act (Public Law 92-463) relating to open meetings and public participation therein.

Dated: April 16, 1974.

[SEAL] JAMES E. SMITH,
Comptroller of the Currency.
[FR Doc.74-9119 Filed 4-19-74;8:45 am]

COMPTROLLER OF THE CURRENCY'S REGIONAL ADVISORY COMMITTEE ON BANKING POLICIES AND PRACTICES OF THE FIFTH NATIONAL BANK REGION

Notice of Closed Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), notice is hereby given that a closed meeting of the Comptroller of the Currency's Regional Advisory Committee on Banking Policies and Practices of the Fifth National Bank Region will be held in the Williamsburg Inn, Williamsburg, Virginia on April 26-27, 1974, from 9 a.m. to 12:00 noon each day.

The purpose of this meeting is to assist the Regional Administrator and Comptroller of the Currency in a con-

tinuing review of bank regulations and policies. The meeting will also apprise agency officials of current conditions and problems banks are experiencing in the Fifth National Bank Region.

It is hereby determined pursuant to section 10(d) of Public Law 92-463 that the meeting is concerned with matters limited in section 552(b) of title 5 of the United States Code and particularly with exceptions (3), (4), and (8) thereof, and is therefore exempt from the provisions of section 10 (a) (1) and (a) (3) of the Act (Public Law 92-463) relating to open meetings and public participation therein.

Dated: April 16, 1974.

[SEAL] JAMES E. SMITH,
Comptroller of the Currency.
[FR Doc.74-9120 Filed 4-19-74;8:45 am]

REGIONAL ADVISORY COMMITTEE ON BANKING POLICIES AND PRACTICES OF THE TENTH NATIONAL BANK REGION

Notice of Closed Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that a closed meeting of the Comptroller of the Currency's Regional Advisory Committee on Banking Policies and Practices of the Tenth National Bank Region will be held on April 29, 1974 at 10:00 a.m. in the Board Room of The First National Bank of Kansas City, Kansas City, Missouri.

The purpose of this meeting is to assist the Regional Administrator and Comptroller of the Currency in a continuing review of bank regulations and policies. The meeting will also apprise agency officials of current conditions and problems banks are experiencing in the Tenth National Bank Region.

It is hereby determined pursuant to section 10(d) of Pub. L. 92-463 that the meeting is concerned with matters listed in section 552(b) of Title 5 of the United States Code and particularly with exceptions (3), (4) and (8) thereof, and is therefore exempt from the provisions of section 10 (a) (1) and (a) (3) of the Act (Pub. L. 92-463) relating to open meetings and public participation.

Dated: April 16, 1974.

[SEAL] JAMES E. SMITH,
Comptroller of the Currency.
[FR Doc.74-9122 Filed 4-19-74;8:45 am]

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[INT FES 74-16]

SAN LUIS WATER DISTRICT, CALIFORNIA

Availability of Final Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of the Interior has prepared a final environmental statement for the proposed irrigation distribution system for San Luis Water District, Merced and Fresno Counties, California, under the Public Law 84-130 Small Loan Program.

The environmental statement concerns the proposed construction of a water distribution network for the purpose of furnishing irrigation water to 35,600 acres of the San Luis Water District on the west side of the San Joaquin Valley in Merced and Fresno Counties, California.

Copies are available for inspection at the following locations:

Office of Assistant to the Commissioner—Ecology, Room 7620, Bureau of Reclamation, Department of the Interior, Washington, D.C. 20240. Telephone (202) 343-4991.

Division of Engineering Support, Technical Services and Publications Branch, E&R Center, Denver Federal Center, Denver, Colo. 80225. Telephone (303) 234-3006.

Office of the Regional Director, Bureau of Reclamation, 2800 Cottage Way, Sacramento, Calif. 95825. Telephone (916) 494-4792.

Single copies of the final environmental statement may be obtained on request to the Commissioner of Reclamation or the Regional Director.

Dated: April 15, 1974.

ROYSTON C. HUGHES,
Assistant Secretary of the Interior.
[FR Doc.74-9083 Filed 4-19-74;8:45 am]

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

ADVISORY BOARD

Notice of Public Meeting

Notice is hereby given that the Commodity Credit Corporation Advisory Board established under section 9(b) of the Commodity Credit Corporation Charter Act of 1949 (63 Stat. 154, 155; 15 U.S.C. 714g (b)), will meet at 8:30

a.m. on Tuesday, May 7, 1974, and Wednesday, May 8, 1974, in Room 2-W, of the Administration Building of the U.S. Department of Agriculture, Washington, D.C.

The purpose of this regularly scheduled quarterly meeting of the Advisory Board is to survey the policies of the Commodity Credit Corporation in connection with the purchase, storage and sale of commodities, and the operation of lending and price support programs. The meeting will be open to the public.

The names of the Presidential appointees comprising the Advisory Board, agenda, summary of the meeting and other information pertaining to the meeting may be obtained from Mr. Frank G. McKnight, Secretary, Commodity Credit Corporation, Room 202-W, Administration Building, U.S. Department of Agriculture, Washington, D.C.

Signed at Washington, D.C. on April 15, 1974.

GLENN A. WEIR,
Acting Executive Vice President,
Commodity Credit Corporation.

[FR Doc.74-9123 Filed 4-19-74; 8:45 am]

Farmers Home Administration

[FHA Instruction 471.1]

CERTIFICATES OF BENEFICIAL OWNERSHIP

Interest Rates to Investors

Notice is hereby given by the Farmers Home Administration that the current rate of interest for certificates of beneficial ownership sold through the National Finance Office established pursuant to 7 CFR 1873.3(b) is as follows:

Rate	Term of Investment
8¼% (8.25%)	1 through 4 Years.
8½% (8.375%)	5 through 9 Years.
8¾% (8.50%)	10 through 25 Years.

Effective date. This notice shall be effective April 22, 1974.

Dated: April 17, 1974.

FRANK W. NAYLOR, Jr.,
Acting Administrator,
Farmers Home Administration.

[FR Doc.74-9184 Filed 4-19-74; 8:45 am]

Forest Service

VERNAL PLANNING UNIT

Availability of Final Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Forest Service, Department of Agriculture, has prepared a final environmental statement for the Vernal Planning Unit, Ashley National Forest, Utah. The Forest Service report number is USDA-FS-FES (Adm) 75-55.

The environmental statement identifies and evaluates the probable effects of the land use plan for the Vernal Planning Unit on the Ashley National Forest in northeastern Utah. The purpose of this

plan is to allocate National Forest lands within the unit to specific resource uses and activities; establish management objectives; document management direction, decision, and necessary coordination between resource uses and activities; and provide for the protection, development, and use of the various resources within the planning unit. The plan provides for minimizing adverse effects and maximizing desirable effects. Minor adverse effects from some development activities will be very short periods of air pollution and some soil disturbance. Recreation opportunities will be modified to include some additional developed type of recreation and additional dispersed recreational opportunities. The mix of uses provided for includes moderate levels of consumptive resource uses. Significant areas will remain undeveloped with options for future management remaining open.

This final environmental statement was transmitted to CEQ on April 12, 1974.

Copies are available for inspection during regular working hours at the following locations:

USDA, Forest Service
So. Agriculture Bldg., Room 3230
12th St. and Independence Ave., SW,
Washington, D.C. 20250

USDA, Forest Service
Regional Planning Office
Federal Building, Room 4408
324 25th Street
Ogden, Utah 84401

Forest Supervisor
Ashley National Forest
437 East Main Street
Vernal, Utah 84078

District Forest Ranger
Vernal Ranger District
650 North Vernal Avenue
Vernal, Utah 84078

A limited number of single copies are available upon request to Forest Supervisor Robert A. Rowen, Ashley National Forest, 437 East Main Street, Vernal, Utah 84078.

Copies of the environmental statement have been sent to various Federal, State, and local agencies as outlined in the CEQ Guidelines.

R. MAX PETERSON,
Deputy Chief, Forest Service.

APRIL 17, 1974.

[FR Doc.74-9157 Filed 4-19-74; 8:45 am]

DEPARTMENT OF COMMERCE

Domestic and International Business Administration

[Case 427]

BERNARD CHOLLET

Order Conditionally Restoring Export Privileges

In the matter of Bernard Chollet Maugarny 15, 95 Montlignon, France, Respondent.

By order effective February 28, 1972 (37 FR 5306), the above-named respondent (Bernard Chollet, Montlignon, France) was denied U.S. export privileges for a period of five years. The order

included a provision to the effect that 2 years after the date thereof the above respondent might apply for modification of the denial order. The respondent filed such application dated March 4, 1974. The application was referred to the Hearing Commissioner and considered by him. He has reported that it appears from said respondent's representations and otherwise from information in possession of the Compliance Division, Office of Export Administration that conditional restoration of said respondent's export privileges is consistent with the purposes of the export control program. The Hearing Commissioner has recommended that an order be entered conditionally restoring export privileges to said respondent and placing him on probation for 3 years.

The undersigned has considered the record herein and concurs with the Hearing Commissioner that conditional restoration of Bernard Chollet's export privileges and placing him on probation for 3 years is consistent with the purposes of the U.S. Export Administration Act of 1969 as amended and regulations thereunder.

Accordingly, it is hereby ordered, That the export privileges of Bernard Chollet be and hereby restored conditionally, and the said respondent is placed on probation for 3 years from the date of this order. The conditions of probation are that the said respondent: (1) Shall fully comply with all of the requirements of the Export Administration Act of 1969 as amended and all regulations, licenses, and orders issued thereunder; (2) shall on request of the Office of Export Administration, or a representative of the U.S. Government, acting on its behalf, promptly disclose fully the details of his participation in any and all transactions involving U.S. origin commodities or technical data, including information as to the disposition or intended disposition of such commodities or technical data, including information as to the disposition or intended disposition of such commodities or technical data and on such request shall also furnish all records and documents relating to such matters. Further, on such request, said respondent shall promptly disclose the names and addresses of his partners, agents, representatives, employees, and other persons associated with him in trade or commerce.

Upon a finding by the Director, Office of Export Administration, or such other official as may be exercising the duties now exercised by him, that said respondent has failed to comply with any of the conditions of probation, said official, with or without prior notice to said respondent, by supplemental order, may revoke the probation of said respondent and deny to him all export privileges for such period as said official may deem appropriate. Such order shall preclude the Bureau of East-West Trade from taking further action for any violation as may be warranted.

This order shall become effective forthwith March 4, 1974 and supersedes

the denial order issued against the respondent on February 28, 1972 (37 FR 5306).

Dated: April 12, 1976.

RAUER H. MEYER,
Director,
Office of Export Administration.

[FR Doc.74-9080 Filed 4-19-74;8:45 am]

COMPUTER SYSTEMS TECHNICAL ADVISORY COMMITTEE

Notice of Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92-463), notice is hereby given that a meeting of the Licensing Procedures Subgroup of the Computer Systems Technical Advisory Committee will be held Monday, April 29, 1974, at 1:30 p.m. in Conference Room A, Main Commerce Building, 14th and Constitution Avenue, Washington, D.C.

Members advise the Office of Export Administration, Bureau of East-West Trade, with respect to questions involving technical matters, worldwide availability and actual utilization of production and technology, and licensing procedures which may affect the level of export controls applicable to computer systems, including technical data related thereto, and including those whose export is subject to multilateral (COCOM) controls.

Agenda items are as follows:

1. Opening remarks by the Chairman, Computer Systems Technical Advisory Committee.
2. Appointment of subgroup chairman.
3. Presentation of papers or comments by the public.
4. Discussion of export licensing procedures relating to computer systems.
5. Executive Session: Continuation of discussion of export licensing procedures.

The public will be permitted to attend the discussion of agenda items 1-4, and a limited number of seats will be available to the public for these agenda items. To the extent time permits, members of the public may present oral statements to the subgroup. Interested persons are also invited to file written statements with the subgroup.

With respect to agenda item 5, "Executive Session," the Assistant Secretary of Commerce for Administration, on December 20, 1973, determined, pursuant to section 10(d) of Public Law 92-463, that this agenda item should be exempt from the provisions of sections 10 (a) (1) and (a) (3), relating to open meetings and public participation therein, because the meeting will be concerned with matters listed in 5 U.S.C. 552(b) (1).

Further information may be obtained from John L. Collins, Chairman, Computer Systems Technical Advisory Committee, IBM World Trade Corporation, 1801 K Street NW., Washington, D.C. 20006 (A/C 202-833-6000).

Minutes of those portions of the meeting which are open to the public will be available 30 days from the date of the meeting upon written request ad-

ressed to: Central Reference and Records Inspection Facility, U.S. Department of Commerce, Washington, D.C. 20230.

Dated: April 17, 1974.

RAUER H. MEYER,
Director, Office of Export Administration, Bureau of East-West Trade, Department of Commerce.

[FR Doc.74-9099 Filed 4-19-74;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[NADA No. 48-236V]

AGRITRONICS CORP.

Agritronics Swine Premix T-S; Withdrawal of Approval of New Animal Drug Application

Pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 512, 82 Stat. 343-351; 21 U.S.C. 360b) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 2.120), the following notice is issued:

Agritronics Corp., 811 24th St., Des Moines, IA 50311, has requested that its NADA (new animal drug application) No. 48-236V be withdrawn in accordance with § 135.28(d) (21 CFR 135.28(d)) on the grounds that the drug is not being marketed. Notice is given that approval of NADA No. 48-236V for Agritronics Swine Premix T-S, which contains tylosin and sulfamethazine, is hereby withdrawn.

Effective date. This notice shall be effective April 22, 1974.

Dated: April 15, 1974.

SAM D. FINE,
Associate Commissioner
for Compliance.

[FR Doc.74-9114 Filed 4-19-74;8:45 am]

HUMAN DRUGS CONTAINING VINYL CHLORIDE OR PACKAGED IN POLY- VINYL CHLORIDE CONTAINERS

Notice to Drug Manufacturers, Packers, and Distributors

Elsewhere in this issue of the FEDERAL REGISTER (39 FR 14215) the Commissioner of Food and Drugs has proposed that all aerosol drug products containing vinyl chloride as a component, including propellant, are new drugs and subject to regulatory proceedings unless the products are the subject of new drug applications approved pursuant to section 505 of the Federal Food, Drug, and Cosmetic Act. That proposal is based on scientific data demonstrating that vinyl chloride is not generally recognized as safe and effective as a component, including propellant, of a drug product.

The Food and Drug Administration is aware that vinyl chloride has been used as a propellant in aerosol drug preparations, but has no information that vinyl chloride is currently being used in the manufacture of drug products. There is ample evidence that vinyl chloride in-

halation can result in acute toxicity manifested by an array of symptoms including unconsciousness as a result of high concentration inhalation. Cardiac effects, bone changes, and degenerative changes in the brain, liver, and kidneys have also been reported in animals. In addition, there are studies demonstrating the carcinogenic effects in animals as a result of inhalation exposure to vinyl chloride, and it has been linked to liver disease, including liver cancer, in workers engaged in the polymerization of the monomer to polyvinyl chloride.

Polyvinyl chloride, a polymeric resin produced by polymerization of vinyl chloride, is used in drug packaging materials. There is evidence of vinyl chloride migration when polyvinyl chloride is used in packaging material for products containing alcohol. There have also been reports of the possible migration of polyvinyl chloride container ingredients to non-alcoholic products as well. Because of this it is necessary to give special study to such packaging material to determine if it is safe for its intended use.

For these reasons it is essential that the Commissioner have knowledge of every drug product currently marketed in the United States that contains vinyl chloride as an ingredient, and information regarding every marketed drug product packaged in a polyvinyl chloride container or in a container lined with polyvinyl chloride. Such information is necessary for determining if there is adequate evidence whether drugs containing vinyl chloride or packaged in containers composed of, or lined with, polyvinyl chloride are safe and effective for their intended purposes and what action, if any, is required to protect the public health.

Section 510(j) (3) of the act, as added by the Drug Listing Act of 1972, authorizes the Commissioner to require each registrant under section 510 of the act to submit a list of each drug product which the registrant is manufacturing, preparing, propagating, compounding, or processing for commercial distribution and which contains a particular ingredient, when the Commissioner has made a finding that the submission of such a list is necessary to carry out the purposes of the act. For the reasons stated above the Commissioner so finds with regard to drugs containing vinyl chloride. As packaging materials are an integral part of the drug product, the Commissioner also so finds with regard to drug products packaged in polyvinyl chloride containers or in containers with polyvinyl chloride liners.

In addition to the required list of drugs containing vinyl chloride and a required list of drug products packaged in polyvinyl chloride containers or in containers with polyvinyl chloride liners, the Commissioner is requesting, but not requiring, that certain other information be submitted. The Commissioner acknowledges that some of the information being requested has also been requested in the regulations implementing the Drug Listing Act of 1972, and will be available

from that source. However, it will greatly simplify the compilation of this information if it is included in this submission.

Therefore, pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (secs. 201, 510, 701(a), 52 Stat. 1040-1042, as amended, 1053, as amended, 1055, as amended; 21 U.S.C. 321, 360, 371(a); 42 U.S.C. 262) and under authority delegated to the Commissioner (21 CFR 2.120), each registrant under section 510 of the act is required to submit to the Food and Drug Administration a list of all human drugs which are being manufactured, prepared, propagated, compounded, or processed for commercial distribution and which contain vinyl chloride whether or not the vinyl chloride is an active or inactive ingredient and a list of all human drug products packaged in polyvinyl chloride containers or in containers with polyvinyl chloride liners as follows:

1. Reporting firm name, address, and registration number.
2. List of drugs containing vinyl chloride (by trade name, if any, and established name, if any) and a list of drug products for which polyvinyl chloride is used as a container or a container liner (by trade name, if any, and established name, if any).

It is requested but not required that the following information also be submitted:

3. National Drug Code (NDC) if one has been assigned.
4. A statement whether the drug is marketed over the counter or limited to prescription distribution.
5. Route of administration.
6. Amount of vinyl chloride in average daily dose.
7. Quantity of drug distributed (number of dosage units) during previous 12 months.
8. A copy of the label and labeling.

In addition to the information requested in items 1 through 8 (excluding item 6) for drug products packaged in polyvinyl chloride containers or in containers with polyvinyl chloride liners it is requested, but not required, that the following information be submitted.

9. A statement of the vinyl chloride content in polyvinyl chloride used for the manufacture of the drug container or container lining. Include description of the methods and extraction systems used to determine this content. If this information is not known, provide the name and address of the drug container or container liner supplier and/or manufacturer.
10. The rate and level of extraction of vinyl chloride from the polyvinyl chloride containers or container liners by the particular drug or by any other extraction or solvent systems, including data derived after periods of storage. Where such information is not known, but is or may be available from the supplier or manufacturer of the container or liner, provide the name and address of such supplier or manufacturer.
11. The rate and level of absorption of vinyl chloride as an ingredient or of vinyl chloride extracted from a polyvinyl chloride container or liner by the drug contained on an average daily dose. Where such information is not known, but is or may be available from the supplier or manufacturer of the container or liner, provide the name and address of such supplier or manufacturer.

12. Name and address of the manufacturer of the polyvinyl chloride resin, where such information is known.

This information shall be submitted to:

Department of Health, Education, and Welfare
Food and Drug Administration
Bureau of Drugs, Drug Listing Staff (HFD-7)
5600 Fishers Lane
Rockville, MD 20852

by May 22, 1974.

Dated: April 15, 1974.

A. M. SCHMIDT,
Commissioner of Food and Drugs.
[FR Doc. 74-9231 Filed 4-19-74; 8:45 am]

ADVISORY COMMITTEES

Notice of Meetings

Pursuant to the Federal Advisory Committee Act of October 6, 1972 (Public Law 92-463, 86 Stat. 770-776; 5 U.S.C. App.), the Food and Drug Administration announces the following public advisory committee meetings and other required information in accordance with provisions set forth in section 10(a) (1) and (2) of the act:

Committee name	Date, time, place	Type of meeting and contact person
1. Panel on Review of Internal Analgesic including Antirheumatic Drugs.	May 8 and 9, 9 a.m., Conference Room C, Parklawn Bldg., 5600 Fishers Lane, Rockville, Md.	Open May 8, 9 a.m. to 10 a.m., closed May 8, after 10 a.m., closed May 9. Lee Gelsmar, Room 10B-05, 5600 Fishers Lane, Rockville, Md. 20852, 301-443-4960.

Purpose. Reviews and evaluates available information concerning safety and effectiveness of active ingredients of currently marketed non-prescription drug products containing internal analgesic agents.

Agenda. Open session: Comments and presentations by interested persons. Closed session: Continuing review of nonprescription internal analgesic drugs under investigation.

Committee name	Date, time, place	Type of meeting and contact person
2. Panel on Review of Orthopaedic Devices	May 11, 9 a.m., Hotel Utah Motor Lodge, Salt Lake City, Utah.	Open 9 a.m. to 10 a.m., closed after 10 a.m. James R. Veale (HFM-120), 5600 Fishers Lane, Rockville, Md. 20852, 301-443-3550.

Purpose. Reviews and evaluates available data concerning safety, effectiveness, and reliability of orthopaedic devices currently in use.

Agenda. Open session: Comments and presentations by interested persons. Closed session: Continuation of review of previous classification results and identification of specific areas for standards for those devices classified as requiring standards.

Committee name	Date, time, place	Type of meeting and contact person
3. Panel on Review of Dental Devices.	May 22 and 23, 9 a.m., American Dental Association Bldg., Chicago, Ill.	Open May 22, 9 a.m. to 10 a.m., closed May 22 after 10 a.m., closed May 23, Robert S. Kennedy, Ph.D., (HFM-120) 5600 Fishers Lane, Rockville, Md. 20852, 301-443-2376.

Purpose. Reviews and evaluates available data concerning the safety, effectiveness, and reliability of dental devices currently in use.

Agenda. Open session: Comments and presentations by interested persons; device classification; and device legislation. Closed session: Continuing review and classification of dental devices.

Agenda items are subject to change as priorities dictate.

During the open sessions shown above, interested persons may present relevant information or views orally to any committee for its consideration. Information or views submitted to any committee in writing before or during a meeting shall also be considered by the committee.

A list of committee members and summary minutes of meetings may be obtained from the contact person for the committee both for meetings open to the public and those meetings closed to the public in accordance with section 10(d) of the Federal Advisory Committee Act.

Most Food and Drug Administration advisory committees are created to advise the Commissioner of Food and Drugs on pending regulatory matters. Recommendations made by the committees on these matters are intended to result in action under the Federal Food, Drug, and Cosmetic Act, and these committees thus necessarily participate with the Commissioner in exercising his law enforcement responsibilities.

The Freedom of Information Act recognized that the premature disclosure of regulatory plans, or indeed internal discussions of alternative regulatory approaches to a specific problem, could have adverse effects upon both public and private interests. Congress recognized that such plans, even when finalized, may not be made fully available in advance of the effective date without damage to such interests, and therefore provided for this type of discussion to remain confidential. Thus, law enforcement activities have long been recognized as a legitimate subject for confidential consideration.

These committees often must consider trade secrets and other confidential information submitted by particular manufacturers which the Food and Drug Administration by law may not disclose, and which Congress has included within the exemptions from the Freedom of Information Act. Such information includes safety and effectiveness information, product formulation, and manufacturing methods and procedures, all

of which are of substantial competitive importance.

In addition, to operate most effectively, the evaluation of specific drug or device products requires that members of committees considering such regulatory matters be free to engage in full and frank discussion. Members of committees have frequently agreed to serve and to provide their most candid advice on the understanding that the discussion would be private in nature. Many experts would be unwilling to engage in candid public discussion advocating regulatory action against a specific product. If the committees were not to engage in the deliberative portions of their work on a confidential basis, the consequent loss of frank and full discussion among committee members would severely hamper the value of these committees.

The Food and Drug Administration is relying heavily on the use of outside experts to assist in regulatory decisions. The Agency's regulatory actions uniquely affect the health and safety of every citizen, and it is imperative that the best advice be made available to it on a continuing basis in order that it may most effectively carry out its mission.

A determination to close part of an advisory committee meeting does not mean that the public should not have ready access to these advisory committees considering regulatory issues. A determination to close the meeting is subject to the following conditions: First, any interested person may submit written data or information to any committee, for its consideration. This information will be accepted and will be considered by the committee. Second, a portion of every committee meeting will be open to the public, so that interested persons may present any relevant information or views orally to the committee. The period for open discussion will be designated in any announcement of a committee meeting. Third, only the deliberative portion of a committee meeting, and the portion dealing with trade secret and confidential information, will be closed to the public. The portion of any meeting during which nonconfidential information is made available to the committee will be open for public participation. Fourth, after the committee makes its recommendations and the Commissioner either accepts or rejects them, the public and the individuals affected by the regulatory decision involved will have an opportunity to express their views on the decision. If the decision results in promulgation of a regulation, for example, the proposed regulation will be published for public comment. Closing a committee meeting for deliberations on regulatory matters will therefore in no way preclude public access to the committee itself or full public comment with respect to the decisions made based upon the committee's recommendation.

The Commissioner has been delegated the authority under section 10(d) of the Federal Advisory Committee Act to issue a determination in writing, containing the reasons therefor, that any advisory committee meeting is concerned with

matters listed in 5 U.S.C. 552(b), which contains the exemptions from the public disclosure requirements of the Freedom of Information Act. Pursuant to this authority, the Commissioner hereby determines, for the reasons set out above, that the portions of the advisory committee meetings designated in this notice as closed to the public involve discussion of existing documents falling within one of the exemptions set forth in 5 U.S.C. 552(b), or matters that, if in writing, would fall within 5 U.S.C. 552(b), and that it is essential to close such portions of such meetings to protect the free exchange of internal views and to avoid undue interference with Agency and committee operations. This determination shall apply only to the designated portions of such meetings which relate to trade secrets and confidential information or to committee deliberations.

Dated: April 17, 1974.

A. M. SCHMIDT,
Commissioner of Food and Drugs.

[FR Doc. 74-9234 Filed 4-19-74; 8:45 am]

ATOMIC ENERGY COMMISSION ADVISORY COMMITTEE ON REACTOR SAFEGUARDS, SUBCOMMITTEE ON REGULATORY GUIDES

Notice of Meeting

APRIL 16, 1974.

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b.), the Advisory Committee on Reactor Safeguards' Subcommittee on Regulatory Guides will hold a meeting on May 8, 1974, in Room 1046, 1717 H Street NW., Washington, D.C. The purpose of this meeting will be to discuss Regulatory Staff drafts of the following proposed regulatory guides:

- (1) Proposed Regulatory Guide 1.XX, "Sumps for Emergency Core Cooling and Containment Spray Systems," Draft 1.
- (2) Proposed Regulatory Guide 1.XX, "Instrumentation for Light-Water-Cooled Nuclear Power Plants to Assess Conditions During and Following an Accident," Draft 1.
- (3) Proposed Revision 1 of Regulatory Guide 1.7, "Control of Combustible Gas Concentrations in Containment Following a Loss of Coolant Accident," Draft 1.
- (4) Proposed Regulatory Guide 10.XX, "Termination of Operating Licenses for Nuclear Reactors," Draft 3.

The following constitutes that portion of the Subcommittee's agenda for the above meeting which will be open to the public:

Wednesday, May 8, 1974, 1:30 p.m. until the conclusion of business. Discussion with representatives of the AEC Regulatory Staff regarding the proposed Regulatory Guides which are agenda items.

In connection with the above agenda items, the Subcommittee may hold Executive Sessions, not open to the public, at 1 p.m., and at the end of the day to exchange opinions and formulate recommendations to the ACRS.

In addition to the Executive Sessions, the Subcommittee and any of its con-

sultants that may be required will meet in closed session with members of the Regulatory Staff for the purpose of discussing Regulatory Staff working papers concerning:

- (1) Shared emergency and shutdown electrical systems for multi-unit nuclear plants.
- (2) Preoperational testing of emergency core cooling systems for PWR's.

This session will involve the internal policy-making processes of both the Subcommittee and the Regulatory Staff and will necessarily require the exchange and discussion of the individual opinions, advice and recommendations of the persons present.

I have determined, in accordance with subsection 10(d) of Public Law 92-463, that the above-noted closed sessions will consist of exchanges of opinions and formulation of recommendations, the discussion of which, if written, would fall within exemption (5) of 5 U.S.C. 552(b). It is essential to close such portions of the meeting to protect the free interchange of internal views and to avoid undue interference with Subcommittee and agency operation.

Practical considerations may dictate alterations in the above agenda or schedule.

The Chairman of the Subcommittee is empowered to conduct the meeting in a manner that in his judgment will facilitate the orderly conduct of business, including provisions to carry over an incomplete open session from one day to the next.

With respect to the public participation in the open portion of the meeting, the following requirements shall apply:

(a) Persons wishing to submit written statements regarding the agenda items may do so by mailing 25 copies thereof to the Executive Secretary, Advisory Committee on Reactor Safeguards, U.S. Atomic Energy Commission, Washington, D.C. 20545. Comments for consideration at this meeting should be post-marked no later than May 1, 1974. Such comments shall be based upon the subject matter of the proposed Regulatory Guides which are agenda items and related documents which are on file and available for public inspection at the Atomic Energy Commission's Public Document Room, 1717 H Street NW., Washington, D.C. 20545. Single copies of drafts of proposed regulatory guides to be discussed in open session at this meeting may be obtained directly upon request to the Director of Regulatory Standards.

(b) Those persons submitting a written statement in accordance with paragraph (a) above may request an opportunity to make oral statements concerning the written statement. Such requests shall accompany the written statement and shall set forth reasons justifying the need for such oral statement and its usefulness to the Subcommittee. To the extent that the time available for the meeting permits, the Subcommittee will receive oral statements during a period of no more than 30 minutes at an appropriate time,

chosen by the Chairman of the Subcommittee, between the hours of 1:30 p.m. and 3:30 p.m. on May 8, 1974.

(c) Requests for the opportunity to make oral statements shall be ruled on by the Chairman of the Subcommittee, who is empowered to apportion the time available among those selected by him to make oral statements.

(d) Information as to whether the meeting has been cancelled or rescheduled and in regard to the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted, can be obtained by a prepaid telephone call on May 6, 1974, to the Office of the Executive Secretary of the Committee (telephone 301-973-5651) between 8:30 a.m. and 5:15 p.m., e.d.t.

(e) Questions may be propounded only by members of the Subcommittee and its consultants.

(f) Seating for the public will be available on a first-come, first-served basis.

(g) The use of still, motion picture, and television cameras, the physical installation and presence of which will not interfere with the conduct of the meeting, will be permitted both before and after the meeting and during any recess. The use of such equipment will not, however, be allowed while the meeting is in session.

(h) A copy of the transcript of the open portions of the meeting will be available for inspection during the following workday at the Atomic Energy Commission's Public Document Room, 1717 H Street NW., Washington, D.C. 20545. Copies of the transcript may be reproduced in the Public Document Room or may be obtained from Ace Federal Reporters, Inc., 415 Second Street NE., Washington, D.C. 20002 (telephone 202-547-6222) upon payment of appropriate charges.

(i) On request, copies of the Minutes of the meeting will be made available for inspection at the Atomic Energy Commission Public Document Room, 1717 H Street NW., Washington, D.C. 20545 after July 8, 1974. Copies may be obtained upon payment of appropriate charges.

JOHN C. RYAN,
Advisory Committee,
Management Officer.

[FR Doc.74-9075 Filed 4-19-74;8:45 am]

[Docket Nos. 50-282, 50-306]

**THE NORTHERN STATES POWER CO.
(PRAIRIE ISLAND UNITS 1 & 2)**

**Reconstitution of Atomic Safety and
Licensing Appeal Board**

Notice is hereby given that, in accordance with the authority in 10 CFR 2.787(a), the Chairman of the Atomic Safety and Licensing Appeal Panel has reconstituted the Atomic Safety and Licensing Appeal Board for these proceedings to consist of the following members:

Alan S. Rosenthal, Chairman
Dr. W. Reed Johnson, Member
William C. Farler, Member

Dated: April 16, 1974.

MARGARET E. DU FLO,
Secretary to the Appeal Board.

[FR Doc.74-9140 Filed 4-19-74;8:45 am]

CIVIL AERONAUTICS BOARD

[Docket No. 26502]

AIR PACIFIC LTD.

Notice of Reassignment of Proceeding

In the matter of Fiji-Majuro via Intermediate Points, and Fiji-Pago Pago via Intermediate Points.

This proceeding, heretofore assigned for prehearing conference and hearing before Administrative Law Judge Ross L. Newmann on April 23, 1974 at 10:00 a.m. (local time), in Room 726 (39 FR 11454, March 28, 1974), is hereby reassigned to Administrative Law Judge Alexander N. Argerakis at the same time and place. Future communications should be addressed to Judge Argerakis.

Dated at Washington, D.C., April 16, 1974.

[SEAL] RALPH L. WISER,
Chief Administrative Law Judge.

[FR Doc.74-9154 Filed 4-19-74;8:45 am]

**COUNCIL ON ENVIRONMENTAL
QUALITY**

ENVIRONMENTAL IMPACT STATEMENTS

Notice of Public Availability

Environmental impact statements received by the Council on Environmental Quality from April 8, 1974 through April 12, 1974. The date of receipt for each statement is noted in the statement summary. Under Council Guidelines, the minimum period for public review and comment on draft environmental impact statements is forty-five (45) days from this FEDERAL REGISTER notice of availability. (June 6, 1974).

Copies of individual statements are available for review from the originating agency. Back copies will also be available from a commercial source, the Environmental Law Institute, of Washington, D.C.

DEPARTMENT OF AGRICULTURE

Contact: Dr. Fred H. Tschirley, Acting Coordinator, Environmental Quality Activities, Office of the Secretary, U.S. Department of Agriculture, Room 331-E, Administration Building, Washington, D.C. 20250, 202-447-3965.

FOREST SERVICE

Final

Ketchikan Timber Sale, Tongas National Forest, Alaska, April 10: The statement refers to the proposed 1974-79 timber harvest plan for the Ketchikan Pulp Company long term timber sale. The harvest, primarily by clearcutting and associated activities, will be of 960 million board feet. Cutting units would be of 160 acres, maximum. Approx-

mately 300 acres of new roads would be constructed in conjunction with the harvest. Wildlife habitat, soil and water quality will be adversely affected (460 pages). Comments made by: EPA, HUD, DOI, USCG, DOC, DOT, state and local agencies, and concerned citizens. (ELR Order No. 40563.)

Deadwood Planning Unit, Boise National Forest, Boise and Valley Counties, Idaho, April 8: The statement refers to the proposed land use plan for the Deadwood Planning Unit of the Boise National Forest. The 153,000 acre unit has been divided into seven areas, which will be managed for recreation, wilderness and backcountry values, transportation (80 miles of new road and 14 miles of trail), timber resources, livestock grazing, and wildlife habitat. Of the two inventoried roadless and undeveloped areas within the unit 30,343 acres will remain unroaded, 19,000 acres will be modified but will remain unroaded, and 45,026 acres will be developed with roads. Comments made by: DOI, EPA, state and local agencies, and concerned citizens. (ELR Order No. 40561.)

Spruce Budworm Suppression, Maine, several counties, April 10: The statement refers to the proposed aerial spraying of 430,000 acres of state and private woodlands in Aroostook, Penobscot, Piscataquis, and Washington Counties, in order to prevent or minimize further spruce budworm-caused tree mortality, and to reduce high spruce budworm populations. Most of the treatment areas have been sprayed during the past ten years. The chemical agent to be used is the insecticide methoxychlor (110 pages). Comments made by: DOI, DOC, HEW, EPA, and state agencies. (ELR Order No. 40572.)

Deer Creeks Planning Unit, Gallatin National Forest, Mont.: The statement refers to a proposed multiple use plan for the 67,800 acre Deer Creeks Planning Unit, Gallatin National Forest. The Unit will be managed for such values as timber, domestic livestock grazing, wildlife, recreation, and watershed protection. The plan includes the construction of 30.5 miles of major route roadway, as well as the construction of side roads. Impact of the plan will include increased access, soil disturbance and erosion, and visual and air pollution (200 pages). Comments made by: EPA, DOI, and state agencies. (ELR Order No. 40569.)

Pleasant Valley Planning Unit, Kootenai National Forest, Lincoln, Sanders, and Flathead Counties, Mont., April 11: The statement refers to a proposed multiple use plan for the Pleasant Valley Planning Unit, Kootenai National Forest. The 41,000 acre Unit has been stratified into six management areas, which will be managed for such values as timber production, recreation, big game winter range production, and livestock forage. There will be road construction, with adverse impact to the natural conditions of the Forest. Other adverse effects will include soil and vegetative disturbance, and air and noise pollution (127 pages). Comments made by: USDA, EPA, DOI, local agencies, and concerned citizens. (ELR Order No. 40575.)

SOIL CONSERVATION SERVICE

Draft

Indian Creek Watershed, Lapeer, Sanilac, and Tuscola Counties, Mich., April 8: The statement refers to a project which is intended to provide watershed protection, flood prevention, and improved drainage on lands of the Indian Creek Watershed. Project measures will include land treatment and multiple-purpose channel work. Impact will include the conversion of 220 acres of grassland-brushland wildlife habitat to cropland,

and the conversion of 17.1 acres of forest to grassland (72 pages). (ELR Order No. 40547.)

DEPARTMENT OF DEFENSE

AIR FORCE

Contact: Dr. Billy Welch, Room 4D 873, The Pentagon, Washington, D.C. 20330, 202-0X7-9297.

Draft

Housing Units, Eglin AFB, Okaloosa County, Fla., April 12: The statement refers to the proposed construction of 150 family housing units for non-commissioned officers on Eglin Air Force Base. The site will include 36 acres of Air Force land. Included in the scope of the project are site preparation, the construction of paved streets and sidewalks and the installation of utilities. Some trees and other vegetation will be destroyed during construction. The area, which encompasses a unique stand of trees, is one of natural beauty (118 pages). (ELR Order No. 40581.)

ARMY CORPS

Contact: Mr. Francis X. Kelly, Director, Office of Public Affairs, Attention: DAEN-PAP, Office of the Chief of Engineers, U.S. Army Corps of Engineers, 1000 Independence Avenue SW., Washington, D.C. 20314, 202-693-7168.

Draft

Nome Harbor and Seawall, Alaska, April 8: The statement refers to the maintenance and operation of the Nome Harbor and Seawall. Typical maintenance requires the annual dredging of 16,000 to 20,000 cu. yds. of material. Adverse impact would be that resulting to marine organisms. (Alaska District) (69 pages). (ELR Order No. 40559.)

Fairfield Vicinity Streams Project, Solano County, Calif., April 11: The statement refers to the proposed 11.25 miles of channel modifications on 5 streams. The streams involved are Ledgewood Creek, Pennsylvania, Avenue Creek, Union Avenue Creek, Laurel Creek and McCoy Creek. The project would provide a high degree of flood protection to an area where frequent flood damages now occur. Adverse impacts include noise and air pollution during construction, and some wildlife species would be displaced (Sacramento District) (89 pages). (ELR Order No. 40574.)

Blackfoot River Modification, Idaho, April 8: The statement refers to the proposed modifications of the existing reservoir in order to incorporate planned flood control through improved runoff forecasting procedures, and the establishment of an exclusive flood control zone within the reservoir. The safety of Blackfoot Dam would also be increased through the improvement of its embankment stability and the increasing of its spillway capacity. Also included is the modification of Chiva Hat Dam. The modification would result in the inundation of an additional one mile of free-flowing stream and 1,600 acres of shoreline, which would include archeologically significant sites. Seven families and 16 persons would be displaced (130 pages). (ELR Order No. 40546.)

Lucky Peak Dam and Lake, Idaho, April 8: The statement evaluates the continued operation, management, and maintenance of Lucky Peak Dam and Lake on the Boise River. Project purposes include flood control, water quality control, supplemental irrigation storage, recreation, and fish and wildlife resources. Adverse impact results from seasonal fluctuations in reservoir water levels. There has been a loss of mule deer habitat, and the reservoir presents an obstacle to deer migration (Walla Walla District) (156 pages). (ELR Order No. 40558.)

Rock Island Local Protection Project, Rock Island County, Ill., April 8: The statement refers to a proposed local flood protection project for Rock Island. Project measures will include an earthen levee, floodwall with removable steel top section, access ramps, pumping stations and landscaping. The project would protect the city from a 200 year frequency flooding of the Mississippi. The project will adversely affect wildlife by acting as a barrier to river access. (Rock Island District) (32 pages). (ELR Order No. 40554.)

Blue River Basin Projects, Kansas and Missouri, April 11: The statement refers to the construction, operation, and maintenance of four authorized lakes: Wolf-Coffee, Indian, Tomahawk, and Mill, and the authorized channel modification in the Blue River Basin. Adverse impacts consist of inundation of wildlife and stream fish habitat, loss of existing and potential residential lands, temporary noise, air, and water pollution, and the displacement of people from private lands (Kansas City District). (ELR Order No. 40573.)

Removal of Water Hyacinth, Aquatic Plant Control, Louisiana, April 8: The statement refers to a program which provided for the extermination or removal of plants from the navigable waters of Louisiana, and from certain feeder streams in Texas, Arkansas, and Mississippi. Water hyacinth, alligatorweed, Eurasian watermilfoil, and other obnoxious aquatic plant growths are among those to be removed. The primary removal effort consists of spraying with 2,4-D under strictly controlled conditions. The statement indicates that because of controls, there are no known adverse effects to fish and wildlife (New Orleans District) (143 pages). (ELR Order No. 40556.)

Draft

Coal Unloading, Lake Superior and Ishpeming RR, Michigan, April 8: The statement refers to the proposed granting of a permit by the Corps of Engineers for construction by the Lake Superior and Ishpeming Railroad of a new coal unloading facility in the Upper (Presque Isle) Harbor at Marquette, Michigan. Negative factors resulting from the construction would include increased water turbidity and reduced visual attractiveness (St. Paul District) (188 pages). (ELR Order No. 40549.)

St. Johns Bayou and New Madrid Floodway, Missouri, April 8: The statement refers to a proposed flood control and drainage project which will include a 2,000 cfs pumping station, 64.2 miles of channel enlargement in the St. Johns Bayou area; channel clean-out on 5.8 miles of stream in Sikeston; a 500 cfs pumping station in the lower Madrid Floodway; a 500 cfs pumping station, outlet structure, and channel enlargement on 15 miles of stream in the St. James Bayou area purchase of 2,500 acres in Tenmile Pond for fish and wildlife management; and purchase of easements on 4,900 acres of lowlands to permit annual flooding. An estimated 7,200 acres of woodlands are expected to be cleared as a result of the project (Memphis District) (69 pages). (ELR Order No. 40557.)

Navigation Project, Davis, Carteret County, N.C., April 8: The statement refers to the proposed construction and maintenance of a deeper navigation project at Davis. Construction consists of deepening the existing project by 2 feet to provide a channel 7 feet deep, 75 feet wide, and 3,500 material in diked areas. Adverse impact will result from increases in temporary turbidity (Wilmington District) (34 pages). (ELR Order No. 40553.)

Texas City Channel, Maintenance Dredging, Texas, April 11: The statement refers to the proposed maintenance dredging of the Texas City Channel, an existing Federal navigation project in Galveston County. The authorized

project includes a 6.7 mile long channel, 40 ft. deep and 400 ft. wide, from Galveston Harbor Channel to a turning basin, 40 ft. deep, 1,000 ft. wide, and 4,253 ft. long at Texas City. Dredging will be performed by hydraulic pipeline dredge with material being disposed of in open water and land disposal areas. Adverse impacts involve the loss of motile and benthic organisms, cover marsh and land vegetation, and increased turbidity (Galveston District) (55 pages). (ELR Order No. 40576.)

Everett Harbor and Snohomish River Navigation, Snohomish County, Wash., April 9: The statement refers to the maintenance of a 15-foot deep navigation channel from Puget Sound one mile up the Snohomish River and an upper channel 8 feet deep and 4½ miles long, two settling basins, and a deep draft harbor. Project maintenance over the next 25 to 30 year period will cause conversion of 400 acres of lowlands, tidelands, and deltas to upland by filling with dredged spoil. Waterfowl habitat will be reduced (Walla Walla District) (53 pages). (ELR Order No. 40562.)

East Lynn Lake, Twelvepole Creek, Wayne County, W. Va., April 10: The statement refers to the operation and maintenance of a dam and management of a 1,005-acre multiple-purpose lake (23,921 acres of land) and other facilities for flood control, recreation, fish and wildlife conservation, and incidental redevelopment benefits. The project is located in the East Fork of Twelvepole Creek, about 6 miles southeast of the city of Wayne. Adverse impacts include the loss of land; conversion of natural stream reach with associated aquatic and terrestrial habitat to a lake environment; period fluctuation of pool levels; loss of nutrient recharge on lands previously flooded downstream; and the disruption of the lives of the people living on the acquired land. (ELR Order No. 40564.)

Columbia Generating Station, Columbia County, Wis., April 8: The statement refers to the proposed construction and operation of 527,000 kilowatt fossil fuel generating plant on the Wisconsin River in Columbia County. Facilities to be constructed or incorporated into the plant include a 22,000 volt tandem-compound turbine generating unit, a shell and tube surface condenser; feed water pumping equipment; two hot-side electrostatic precipitators; a water treatment system; accessory power station equipment; transmission facilities; a cooling lake; an ash basin; a coal yard; and an intake structure on the river. Adverse impacts are the loss of 850 acres of land, and increased air and water pollution (St. Paul District). (ELR Order No. 40560.)

Final

Lakeport Lake, Lake County, Calif., April 8: The statement refers to the proposed construction of a 1,540' long earth and rockfill dam on Scott's Creek, for the purposes of flood control and irrigation. Approximately 700 acres of land and 8 miles of riparian habitat will be inundated by the project (150 pages). Comments made by: DOI, USDA, EPA, state and local agencies, and concerned citizens. (ELR Order No. 40551.)

NAVY

Contact: Mr. Joseph A. Grimes, Jr., Special Civilian Assistant to the Secretary of the Navy, Washington, D.C. 20350, 202-697-0892.

Draft

Air Combat Maneuvering Range (ACMR) (2), North Carolina, April 8: The statement refers to the proposed establishment of an ACMR, 30 nautical miles in diameter between the altitudes of 5,000 and 50,000 feet over the Atlantic Ocean, 26 nautical miles east of Kitty Hawk, North Carolina. Within the range, aircrews will engage each other in simulated combat. Because of public opposi-

tion, the site has been relocated from the earlier selection over land at Pamlico Sound. Adverse impact will include engine noise, and occasional sonic boom, which will be heard on the ocean surface under the range (47 pages). (ELR Order No. 40548.)

ENVIRONMENTAL PROTECTION AGENCY

Contact: Mr. Sheldon Meyers, Director, Office of Federal Activities, Room 3630 Water-side Mall, Washington, D.C. 20460, 202-755-0940.

Draft

Central Service Area, Ocean County, N.J., April 12: The statement refers to the proposed granting of funds by EPA to the Ocean County Sewerage Authority for new sewage facilities. Included would be a secondary sewage treatment plant, interceptor sewers and force mains, and an ocean outfall. The project will allow cessation of wastewater discharge into inland streams; the highly treated effluent will be discharged into the Atlantic Ocean. Waste sludge will be disposed of in an approved sanitary landfill. (ELR Order No. 40603.)

DEPARTMENT OF INTERIOR

Contact: Mr. Bruce Blanchard, Director, Environmental Project Review, Room 7260, Department of the Interior, Washington, D.C. 20240, 202-343-3891.

BUREAU OF LAND MANAGEMENT

Draft

Livestock Grazing on National Resource Lands: The statement analyzes the livestock grazing management program on lands administered by the BLM. The analysis includes the improvement of rangeland conditions for watersheds and wildlife habitat, and provision of a sustained yield of livestock forage consistent with environmental protection and enhancement. About 20,000 livestock operations and 13 million animal unit months annually are involved. Among the impacts of the program are continued competition for forage among livestock, wildlife, and wild horses and burros; and the effects of fence, water facility, and land treatment developments. (ELR Order No. 40577.)

DEPARTMENT OF TRANSPORTATION

Contact: Mr. Martin Convisser, Director, Office of Environmental Quality, 400 7th Street SW., Washington, D.C. 20590, 202-426-4357.

FEDERAL AVIATION ADMINISTRATION

Draft

Radar Surveillance Facility, West Cummington, Hampshire County, Mass., April 10: The statement refers to the construction and operation of an Air Route Surveillance Radar (ARSR) facility to be located on Bryant Mountain, West Cummington. Adverse impacts of the facility include fossil fuel emissions, negative effect on water quality, and radiation (52 pages). (ELR Order No. 40566.)

Mason County Airport, Ludington, Mason County, Mich., April 10: The statement refers to the proposed development of the Mason County Airport in Ludington. The project consists of land acquisition for runway extension and clear zone, surfacing of a runway and taxiway, installation of a two-box visual approach slope indicator (VASI) on each end of Runway 7-25, and construction and installation of lighting on a north-easterly extension of Runway 7-25. Adverse impacts are road closures, loss of wildlife habitat and increases in air and noise pollution (62 pages). (ELR Order No. 40570.)

Final

Detroit Metropolitan Wayne County Airport, Wayne County, Mich., April 10: The proposed project is the expansion of the

existing facility to provide increased runway capacity. The action consists of acquiring 1,524 acres of land; constructing a 10,000' x 150' runway with parallel and connecting taxiways; installing runway and taxiway lights and navigational aids; relocating Eureka road; constructing perimeter fencing; and landscaping. Twelve businesses and 109 residential units housing 315 persons will be displaced. Adverse effects include loss of agricultural land; loss of 1300 acres of wildlife habitat; increased storm water runoff and increased noise and air pollution (44 pages). Comments made by: DOT, USDA, DOC, HUD, EPA, DOI, COE, state and local agencies, and concerned citizens. (ELR Order No. 40568.)

FEDERAL HIGHWAY ADMINISTRATION

Draft

Route 99, Sacramento and Sutter Counties, Calif., April 8: This statement refers to the construction of approximately 13 miles of 4 lane freeway in Sacramento and Sutter Counties from the junction of Rte. 99 with I-5 to the junction of Rte. 99 with Rte. 70. The proposed Rte. 99 would utilize the existing 2 lane facility. Adverse impacts include the loss of 540 acres of agricultural land, increased urbanized growth and the displacement of 3 families. (ELR Order No. 40550.)

I-475, Genesee County, Mich., April 10: The statement refers to the proposed construction of I-475 in the city of Flint and Genesee County, and for reconstruction of Pierson Road between Dart Highway and west of Selby Road. Adverse impacts include disruption of established urban land use and transportation patterns, and displacement of 25 families and 2 businesses. A 4(f) determination is necessary for Dayton Park, Kearsley Park, St. John Street Park, West Boulevard Drive Park, and the Flint River Dam Area. (ELR Order No. 40571.)

I-64, Appalachian Corridor "L," Raleigh County, W. Va., April 8: The statement discusses the anticipated social, economic, and environmental effects of seven proposed alternate schemes for I-64, Beckley to Bragg, and WVA Turnpike, Appalachian Corridor "L" from Beckley to Bradley. Adverse effects of the projects will be right-of-way acquisition, increased levels of air, noise and water pollution, and disturbance to wildlife. The exact number of miles, acres and displacements will not be known until one option is chosen. (ELR Order No. 40552.)

Final

U.S. 45, Mannheim Road, Cook County, Ill., April 10: The project involves the widening of U.S. 45 (Mannheim Road) from Lake Street and Irving Park Road in Cook County for a distance of approximately 4.5 miles. The road will be widened from 4 to 6 lanes. Adverse impacts are increased noise pollution, acquisition of a small amount of land, and the displacement of 4 families and 10 businesses. Comments made by: HUD, USDA, DOC, HEW, DOI, USCG, and state agencies. (ELR Order No. 40567.) (NTIS Order No. (none).)

SR 68, Guilford County, N.C., April 8: The statement refers to the proposed construction of Route 68 in Guilford County. The highway will be a basic four lane divided facility with a length of 4.9 miles. Adverse impacts include siltation of the East Prong Deep River drainage basin, increased noise pollution, and the displacement of 7 families and 2 businesses (92 pages). Comments made by: USDA, COE, EPA, GSA, HUD, DOI, and state and local agencies. (ELR Order No. 40555.)

138kV Power Transmission Line, Franklin County, Ohio, April 8: The project involves the construction of a 138 kV Transmission line within the limited access right-of-way of I-270. The line is to run from the Linworth Substation to the Huntley Substation.

The transmission line is essential to the area so that it can have sufficient and reliable electric power. Adverse impacts include the visual disruption of the area, and the loss of some trees (44 pages). Comments made by: EPA, DOI, HUD, HEW, USDA, COE, USCG, and state and local agencies. (ELR Order No. 40545.)

I-91, Caledonia County, Vt., April 10: The proposed project is the completion of 24 miles of I-91. Right-of-way acquisition will include approximately 2279 acres of land, 100 family units, 7 businesses, and 2 farms. Approximately 1200 acres of woodland with water storage properties and wildlife will be lost. Other adverse effects stemming from the project are increased soil erosion causing siltation in surrounding streams and increased air and noise pollution levels (251 pages). Comments made by: HUD, EPA, DOC, DOI, COE, USDA, FPC, HEW, DOT, state and local agencies, and concerned citizens. (ELR Order No. 40565.)

GARY L. WIDMAN,
General Counsel.

[FR Doc.74-9153 Filed 4-19-74; 8:45 am]

DELAWARE RIVER BASIN
COMMISSION

NOTICE OF PUBLIC HEARING

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, April 24, 1974, in Room 603, City Hall Annex, Juniper and Filbert Streets in Philadelphia, beginning at 2 p.m. The subjects of the hearing will be as follows:

A. A proposal to amend the Comprehensive Plan so as to include therein the following projects:

1. *Chester County Commissioners.* A floodwater retarding dam to be constructed on Beaver Creek approximately four miles northwest of Downingtown in East Brandywine and West Brandywine Townships, Chester County, Pa. The 35-foot high structure would have a storage volume of 565 acre-feet and will control runoff from a drainage area of 1,984 acres. The project will be a part of the Brandywine Creek Watershed Work Plan.

2. *Musconetcong Sewerage Authority.* Enlargement of the Authority's existing sewage treatment plant in Mt. Olive Township, Morris County, N.J. The plant will provide 90 percent removal of BOD₅ and suspended solids. Treated effluent will discharge into Willow Brook, a tributary of the Musconetcong River.

3. *New Jersey Water Co.* A well water supply project to augment public water supplies in Cherry Hill, Gloucester and Voorhees Townships and Gibbsboro, Camden County, N.J. Increased withdrawals will be from six new wells and eight existing wells. Combined withdrawals from all wells in the system will be limited to 32.5 million gallons per day which will increase to 36 million gallons per day upon completion of upgraded waste treatment facilities in the communities served.

4. *Cherry Hill Township.* Construction of temporary waste treatment facilities to relieve overload conditions in Cherry Hill Township, Camden County, N.J. The Ashland sewage treatment plant (500,000 gallons per day); Barclay Farm sewage treatment plant (1 million gallons per

day); Stafford sewage treatment plant (450,000 gallons per day); Old Orchard sewage treatment plant (1.3 million gallons per day); Pennsauken #2 sewage treatment plant (3.5 million gallons per day); and Kingston sewage treatment plant (1.5 million gallons per day) will be expanded on an interim basis pending regionalization within the service area which is projected for 1978. Each facility is designed to provide removal of 90 percent of BOD, and suspended solids. Treated effluent from all plants will discharge to tributaries of either the Cooper River or Pennsauken Creek.

B. Applications for water quality certification pursuant to section 401 of the Federal Water Pollution Control Act:

1. *Pennsylvania Dept. of Transportation*. Construction of a bridge across the Lehigh River in Northampton County, Pa. The bridge would continue PA 33 from its present terminus at Route 22 in Bethlehem Township, southward into Lower Saucon Township, and eventually into Bucks County.

2. *Public Service Electric and Gas Co.*: Construction of the service water intake structure, two barge unloading docks and three discharge pipes, and dredging and filling several areas in the Delaware in conjunction with the construction of the Hope Creek Project.

Documents relating to the items on this hearing notice may be examined at the Commission's offices. Persons wishing to testify are requested to notify the Secretary prior to the hearing.

W. BRINTON WHITALL,
Secretary.

APRIL 11, 1974.

[FR Doc.74-9097 Filed 4-19-74;8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

[OPP-32000/41]

NOTICE OF RECEIPT OF APPLICATIONS FOR PESTICIDE REGISTRATION; DATA TO BE CONSIDERED IN SUPPORT OF APPLICATIONS

On November 19, 1973, the Environmental Protection Agency published in the FEDERAL REGISTER (38 FR 31862) its interim policy with respect to the administration of section 3(c)(1)(D) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (86 Stat. 979), and its procedures for implementation. This policy provides that EPA will, upon receipt of every application, publish in the FEDERAL REGISTER a notice containing the information shown below. The labeling furnished by the applicant will be available for examination at the Environmental Protection Agency, Room EB-37, East Tower, 401 M Street SW., Washington, D.C. 20460.

On or before June 21, 1974, any person who (a) is or has been an applicant, (b) desires to assert a claim for compensation under section 3(c)(1)(D) against another applicant proposing to use supportive data previously submitted and approved, and (c) wishes to preserve his opportunity for determination of reason-

able compensation by the Administrator must notify the Administrator and the applicant named in the FEDERAL REGISTER of his claim by certified mail. Every such claimant must include, at a minimum, the information listed in this interim policy published on November 19, 1973.

Applications submitted under 2(a) or 2(b) of the interim policy in regard to usage of existing supportive data for registration will be processed in accordance with existing procedures. Applications submitted under 2(c) will be held for the 60-day period before commencing processing. If claims are not received, the application will be processed in normal procedure. However, if claims are received within 60 days, the applicants against whom the particular claims are asserted will be advised of the alternatives available under the Act. No claims will be accepted for possible EPA adjudication which are received after June 21, 1974.

APPLICATIONS RECEIVED

EPA File Symbol 8866-RT. Arco Chemical Corporation, 4871 N. 119th Street, Milwaukee, Wisconsin 53225. *Arco Super Shock Granular for Swimming Pools*. Active Ingredients: Sodium dichloro-s-triazinetrione dihydrate 100%. Method of Support: Application proceeds under 2(b) of interim policy.

EPA File Symbol 257-EON. Fluid-Stalfort, Inc., 1354 Old Post Road, Havre de Grace, Maryland 21078. *Blue Floral Cleaner-Disinfectant-Deodorizer-Fungicide*. Active Ingredients: Alkyl (60% C14, 30% C16, 5% C12, 5% C18) dimethyl benzyl ammonium chlorides 2.25%; Alkyl (68% C12, 32% C14) dimethyl ethylbenzyl ammonium chlorides 2.25%; Sodium carbonate 3.0%. Method of Support: Application proceeds under 2(b) of interim policy.

EPA File Symbol 4822-RGR. S. C. Johnson & Son, Inc., 1525 Howe Street, Racine, Wisconsin 53403. *Johnson Wax Raid Aqueous Ant and Roach Killer*. Active Ingredients: O-O-diethyl-O-3,5,6-trichloro-2-pyridyl phosphorothioate 0.25%; pyrethrins 0.08%; technical piperonyl butoxide 0.40% (equivalent to 0.32% of (butylcarbityl) (6-propyl piperonyl) ether and 0.08% related compounds); petroleum distillate 0.46%. Method of Support: Application proceeds under 2(c) of interim policy.

EPA File Symbol 6284-EL. Keifer McNeil, Division McNeil Corporation, 999 Switzer Avenue, Akron, Ohio 44311. *Sears Trichlorine Concentrate Tablet Cartridge*. Active Ingredients: Trichloro-s-triazinetrione 100%. Method of Support: Application proceeds under 2(b) of interim policy.

EPA File Symbol 1307-RRA. Magnolia Chemical Company, Inc., 2646 Rodney Lane, P.O. Box 20179, Dallas, Texas 75220. *Magnolia Mighty Pine Cleaner-Disinfectant-Deodorizer-Fungicide*. Active Ingredients: n-Alkyl (60% C14, 30% C16, 5% C12, 5% C18) dimethyl benzyl ammonium chlorides 2.25%; n-Alkyl (68% C12, 32% C14) dimethyl ethylbenzyl ammonium chlorides 2.25%; Sodium Carbonate 3.00%; Tetrasodium ethylenediamine tetraacetate 1.00%. Method of Support: Application proceeds under 2(b) of interim policy.

EPA File Symbol 1307-RRL. Magnolia Chemical Company, Inc., 2646 Rodney Lane, P.O. Box 20179, Dallas, Texas 75220. *Magnolia Magna Mint Cleaner-Disinfectant-Deodorizer-Fungicide*. Active Ingredients: n-Alkyl (60% C14, 30% C16, 5% C12, 5% C18) dimethyl benzyl ammonium chlorides 2.25%; n-Alkyl (68% C12, 32% C14) di-

methyl ethylbenzyl ammonium chlorides 2.25%; Sodium Carbonate 3.00%; Tetrasodium ethylenediamine tetraacetate 1.00%. Method of Support: Application proceeds under 2(b) of interim policy.

EPA File Symbol 1307-RRT. Magnolia Chemical Company, Inc., 2646 Rodney Lane, P.O. Box 20179, Dallas, Texas 75220. *Magnolia Lemophene Cleaner-Disinfectant-Deodorizer-Fungicide*. Active Ingredients: n-Alkyl (60% C14, 30% C16, 5% C12, 5% C18) dimethyl benzyl ammonium chlorides 2.25%; n-Alkyl (68% C12, 32% C14) dimethyl ethylbenzyl ammonium chlorides 2.25%; Sodium Carbonate 3.00%; Tetrasodium ethylenediamine tetraacetate 1.00%. Method of Support: Application proceeds under 2(b) of interim policy.

Dated: April 8, 1974.

JOHN B. RITCH, JR.,
Director, Registration Division.

[FR Doc.74-8317 Filed 4-19-74;8:45 am]

[Docket No. 300]

BUTCHER'S QUEST GERMICIDE

Cancellation of Registration; Notice of Objections and Request for Hearing

Notice is hereby given pursuant to § 164.8 of the EPA Rules of Practice (38 FR 19371; 40 CFR 168.8), issued under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (86 Stat. 973; 7 U.S.C. 136), that objections and a request for a public hearing have been filed under § 164.20 of those Rules by The Butcher Polish Company, 120 Bartlett Street, Marlborough, Massachusetts 01752, in connection with a Notice of Intent to Cancel registration of the above-named product (EPA Reg. No. 7176-1). The Notice was based on the failure of the product to pass the AOAC Use Dilution Test and AOAC Fungicidal Test, and that it has been determined that, when used as directed the product as formulated cannot be relied upon to provide the benefits claimed on its label, and as such, the product and its labeling do not comply with the Act.

For information concerning the issues involved and other details, interested persons are referred to the docket of this proceeding on file with the Hearing Clerk, Environmental Protection Agency, Room 1019, Waterside Mall, East Tower, 401 M Street, SW., Washington, D.C. 20460.

FREDERICK W. DENNISTON,
Administrative Law Judge.

APRIL 17, 1974.

[FR Doc.74-9163 Filed 4-19-74;8:45 am]

2,4,5-TRICHLOROPHENOXYACETIC ACID

[CONSOLIDATED FIFRA Docket No. 295 and I.F. & R. Docket Nos. 42, 44, 45 and 48]

Notice of Hearing

These consolidated proceedings under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (86 Stat. 973; 7 U.S.C. 136, et seq.), involve the use of 2,4,5-T on rice and all other uses. Take notice that hearings will commence at 10:00 a.m., on May 14, 1974, at the U.S. Tax Court, 1111 Constitution Avenue, Room 2132, Court Room No. 1,

Washington, D.C. 20044. Thereafter, it may be moved to a different place and may be continued from day to day or recessed to a later day without other notice than announcement thereof at the hearing.

Inquiries concerning the hearing may be addressed to the Hearing Clerk, Environmental Protection Agency, Washington, D.C. 20460.

FREDERICK W. DENNISTON,
Administrative Law Judge.

APRIL 16, 1974.

[FR Doc. 74-9162 Filed 4-19-74; 8:45 am]

FEDERAL POWER COMMISSION COMMON CARRIER SERVICES INFORMATION¹

[Report No. 696]

DOMESTIC PUBLIC RADIO SERVICES Applications Accepted for Filing²

APRIL 15, 1974.

Pursuant to §§ 1.227(b)(3) and 21.30 (b) of the Commission's rules, an application, in order to be considered with any domestic public radio services application appearing on the attached list, must be substantially complete and tendered for filing by whichever date is earlier: (a) the close of business one business day preceding the day on which the Commission takes action on the previously filed application; or (b) within 60 days after the date of the public notice listing the first prior filed application (with which subsequent applications are in conflict) as having been accepted for filing. An application which is subsequently amended by a major change will be considered to be a newly filed application. It is to be noted that the cut-off dates are set forth in the alternative applications will be entitled to consideration with those listed below if filed by the end of the 60 day period, only if the Commission has not acted upon the application by that time pursuant to the first alternative earlier date. The mutual exclusivity rights of a new application are governed by the earliest action with respect to any one of the earlier filed conflicting applications.

The attention of any party in interest desiring to file pleadings pursuant to section 309 of the Communications Act of 1934, as amended, concerning any domestic public radio services application accepted for filing, is directed to §§ 21.27 of the Commission's rules for provisions

¹ All applications listed in the appendix are subject to further consideration and review and may be returned and/or dismissed if not found to be in accordance with the Commission's Rules, regulations and other requirements.

² The above alternative cut-off rules apply to those applications listed in the appendix as having been accepted in Domestic Public Land Mobile Radio, Rural Radio, Point-to-Point Microwave Radio and Local Television Transmission Services (Part 21 of the Rules).

governing the time for filing and other requirements relating to such pleadings.

FEDERAL COMMUNICATIONS COMMISSION,

[SEAL] VINCENT J. MULLINS,
Secretary.

APPLICATIONS ACCEPTED FOR FILING

DOMESTIC PUBLIC LAND MOBILE RADIO SERVICE

21172-C2-P-74, Edythe L. Kies, d/b as Traverse Answering Service (New). C.P. for a new 1-way station to operate on 152.24 MHz to be located at Cedar Run Road, Traverse City, Michigan.

21173-C2-TC-74, Ra-Tel Company (KIY777). Consent to Transfer of Control from Wilson Jiggs Broadwell and John B. Askew, Transferors, to Lynwood A. Williams, Transferee. Station (KIY777), Selma, North Carolina.

21174-C2-P-74, Mobile Telephone Service of Wheeling, West Virginia (KQK775). C.P. to change antenna system and antenna location operating on 152.12 MHz at Loc. #2: Riggs Knob, 4.2 miles South of Moundsville, West Virginia.

21175-C2-P-74, Autophone of San Antonio (KKJ451). C.P. to change antenna system and antenna location operating on 152.12 MHz at KWEX TV Tower, 111 Martinez Street, San Antonio, Texas.

21176-C2-ML-74, Frank L. Yates, Jr., d/b as Gulf Mobilphone (KFL885). C.P. to change antenna system and replace transmitter operating on 152.03 MHz located at corner of 59th Avenue and 31st Street, Gulfport, Mississippi.

21177-C2-P-(3)-74, Arrowhead Business Radio, Inc. (New). C.P. for a new 2-way station to operate on 152.12 MHz base, and 459.125 MHz repeater at Loc. #1: Maple Hill, 1.5 mile S. of Hibbing, Minnesota; and 454.125 MHz control at Loc. #2: 1306 Windsor Avenue, Duluth, Minnesota.

21178-C2-P-74, Pacific Northwest Bell Telephone Company (KRS680). C.P. to change antenna system and antenna location operating on 152.84 MHz located West 501 Second Avenue, Spokane, Washington.

21180-C2-P-74, Pacific Northwest Bell Telephone Company (KOP300). C.P. to change antenna system, replace transmitter operating on 152.60 MHz located at Bald Ridge, 13 miles SE. of Baker, Oregon.

21181-C2-ML-74, Airsignal of California, Inc. (KMM706). C.P. to change antenna system operating on 454.100 MHz located at 2904 Fine Avenue, Modesto, California.

21182-C2-P-74, Airsignal of California, Inc. (New). C.P. for a new 1-way station to operate on 35.22 MHz to be located 2.5 miles N. of Porterville, California.

21183-C2-P-74, Airsignal of California, Inc. (New). C.P. for a new 1-way station to operate on 35.22 MHz to be located at 2904 Fine Avenue, Modesto, California.

21184-C2-P-74, Southern Bell Telephone and Telegraph Company (KTS261). C.P. to change antenna system operating on 152.75 MHz located at 1525 SW. Avenue "E", Belle Glade, Florida.

21185-C2-P-74, Beep Communication Systems, Inc. (KEK287). C.P. to change antenna system and antenna location and replace transmitter operating on 454.225 MHz at Loc. #1: North Tower, World Trade Center, New York, New York.

21186-C2-P-(3)-74, Stockton Mobilphone, Inc. (KRM984). C.P. for additional base facilities to operate on 152.24 MHz at a new site described as Loc. #2: 1,800 feet

West of California Hwy 49, 3.5 miles South of Eldorado, California; add control facilities to operate on 72.66 MHz at a new site described as Loc. #3: 2171 Ralph Avenue, Stockton, California; and add control facilities to operate on 72.66 MHz at a new site described as Loc. #4: 3502 Kroy Way, Sacramento, California.

21187-C2-P-74, Mebane Home Telephone Company (New). C.P. for a new 2-way station to operate on 152.81 MHz to be located at 107 W. Center Street, Mebane, North Carolina.

Renewal of Licenses expiring April 1, 1974
TERM: April 1, 1974 to April 1, 1979:

ALABAMA		Call sign
Licensee		
Telpage, Ltd.	-----	KIY734
Do	-----	KSV920
ALASKA		
Communications Engineering, Inc.	-----	KWB404
COLORADO		
B&C Mobile Communications, Inc.	-----	KUO572
ILLINOIS		
Tel-Illinois, Inc.	-----	KSJ627
Do	-----	KSJ811
Do	-----	KTS202
Do	-----	KTS245
Do	-----	KUC903
Do	-----	KUO556
Do	-----	KUO564
Do	-----	KUO565
MISSOURI		
Tel-Missouri	-----	KAA888
Do	-----	KDN306
Do	-----	KRS636
NORTH CAROLINA		
Aircall, Inc.	-----	KIY395
Do	-----	KIY776
NEW MEXICO		
Radio Dispatch Service	-----	KLB513
NEW YORK		
Martin J. Nunn	-----	KEA776
Tel-Page Corp.	-----	KRH631
TENNESSEE		
Jackson Mobilphone Co., Inc.	-----	KUO633
WASHINGTON		
Tele-Comm, Inc.	-----	KON925
Do	-----	KOP246
Do	-----	KOP253
WISCONSIN		
Office Service Bureau, Inc.	-----	KRS690

The following applications were timely filed but inadvertently left off a previous Public Notice:

Licensee	Call sign
KANSAS	
General Communications System.	KAQ630
SOUTH CAROLINA	
Able Answering Service	KSV890

Major Amendments

9760-C2-P-73, All Services, Inc. (KLF484), Charleston, South Carolina. Add C.P. for additional facilities on 152.09 MHz at 2104

Mt. Pleasant, Charleston, South Carolina.
20044-C2-P-74, Gladys B. Joines, d/b as Joines Telephone Answering and Radio Communications, Rochester, Pennsylvania (KGH870). Amend to change the base station antenna system, antenna radiation characteristics and effective radiated power. All other particulars of operation remain as reported in PN #658 dated July 23, 1973.

20482-C2-P-74, Range Corporation (New), Marquette, Michigan. Amend to change antenna system and to increase effective radiated power. All other particulars are to remain as reported in PN #673 dated November 5, 1973.

20858-C2-P-74, Central State Telephone Company (New). Amend to change antenna system and radiation characteristics for location 0.4 mile South of Vesper, Wisconsin. All other particulars to remain as reported on PN #685 dated January 28, 1974.

Applications Accepted For Filing:

CORRECTIONS

20020-C2-P-74, Robert S. Ditton (KOF918). Correct PN #657 dated July 16, 1973. Delete frequency 72.22 MHz. All other particulars to remain as originally reported.

20082-C2-ML-74, Arvig Telephone Company, Inc. (KCI305). Correct PN #691 dated March 11, 1974 to read: Mod. License to change base frequency 152.54 MHz to 152.81 MHz and mobile frequency 157.80 MHz to 158.07 MHz. Existing 152.57 MHz facility to remain as currently authorized. Located West of Equation Avenue, Pequot Lakes, Minnesota.

Application file number 20912-C2-P-74 on PN #687 should have been listed as a major amendment to 7246-C2-P-73. All other particulars to remain as reported on PN #687.

POINT-TO-POINT MICROWAVE RADIO SERVICE

3765-C1-P-74, The Pacific Telephone and Telegraph Company (KMQ34), 344 Second Street, San Bernardino, California. Lat. 34°06'07" N., Long. 117°17'33" W. C.P. to change power, freq. and replace transmitters on freq. 6271.4H and 6330.7H MHz towards Ranger, California, on azimuth 123°28'.

3766-C1-P-74, Same (KNL59), Ranger, 6 miles SSE of Banning, (Riverside), California. Lat. 33°50'32" N., Long. 116°49'24" W. C.P. to change power, freq. and replace transmitter on freq. 6078.6H MHz towards San Bernardino, California, on azimuth 303°44'.

3769-C1-P-74, The Chesapeake and Potomac Telephone Company of Virginia (New), Behind Building M51, Norfolk Operating Base, Norfolk, Virginia. Lat. 36°56'58" N., Long. 76°18'34" W. C.P. for a new station on freq. 11305V and 11625V MHz towards Newport News, Virginia on azimuth 289°7'.

3770-C1-P-74, Same (KJG52), 3305 Huntington Avenue, Newport News, Virginia. Lat. 36°59'01" N., Long. 76°25'57" W. C.P. to add freqs. 10,735V and 11,055V MHz towards a new point of communication at Norfolk Operating Base, Norfolk, Virginia, on azimuth 109°3'.

3771-C1-P-74, General Telephone Company of Florida (KIL88), Corner of Zack and Morgan Street, Tampa (Hillsborough), Florida. Lat. 27°57'01" N., Long. 82°27'24" W. C.P. to add freq. 3770H and 2112.4V MHz towards Wimauma, Florida on azimuth 155°33'.

3772-C1-MP-74, Same (KIO65), Corner of Pine Place and Bamboo Lane, Sarasota, Florida. Lat. 27°20'06" N., Long. 82°32'10" W. Mod. C.P. to add freq. 2162.4V MHz towards Verna, Florida, on azimuth 57°57'.

3773-C1-P-74, Same (KIY21), 830 Arlington Avenue, St. Petersburg, (Pinellas) Florida. Lat. 27°46'19" N., Long. 82°38'44" W. C.P. to add freq. 6226.9V MHz towards a new point of communication at Wimauma, Florida, on azimuth 101°29'.

3774-C1-P-74, Same (WIU84), 2.4 miles on an azimuth of 276° from Wimauma, (Hillsborough), Florida. Lat. 27°42'57" N., Long. 82°20'13" W. C.P. to add freq. 5974.8V MHz towards a new point of communication at St. Petersburg, Florida, on azimuth 281°37'; freq. 3730.0H and 2162.4H MHz towards a new point of communication at Tampa, Florida, on azimuth 335°37'.

3775-C1-P-74, Same (WIU85), Verna, 10.9 miles on an azimuth of 135° from Parrish (Manatee), Florida. Lat. 27°27'59" N., Long. 82°18'02" W. C.P. to add freq. 2112.4V MHz towards Sarasota, Florida, on azimuth 238°03'.

3776-C1-ML-74, American Telephone and Telegraph Company (KID63), 51 Ivy Street, Atlanta (Fulton), Georgia. Lat. 33°45'21" N., Long. 84°23'10" W. Mod. of License to change polarization from Vertical to Horizontal on freqs. 3730, 3810, 3970, 4050, 4130, and 3890 towards Lovejoy, Georgia, on azimuth 164°52'.

3777-C1-ML-74, American Telephone and Telegraph Company (KIK65), 2.5 miles SE. of Lovejoy (Henry), Georgia. Lat. 33°25'30" N., Long. 84°16'46" W. C.P. to change polarization from Vertical to Horizontal on freqs. 3770, 3850, 3930 and 4010; delete freq. 4170V MHz towards Atlanta, Georgia, on azimuth 344°56'.

3778-C1-R-74, New York Telephone Company (WJM69), Albany, New York. Application for Renewal of License for Term: April 12, 1974 to April 12, 1975.

3779-C1-R-74, Same (WJM70), Troy, New York. Application for Renewal of License for Term: April 12, 1974 to April 12, 1975.

3780-C1-P-74, The Mountain States Telephone and Telegraph Company (New), 50 West 2nd South Hurricane (Washington), Utah. Lat. 37°10'27" N., Long. 113°17'17" W. C.P. for a new station on freqs. 11,445V and 11,685H MHz towards Little Creek Mountain via passive reflector.

3781-C1-P-74, Same (KPQ26), 103 West Center Street, Cedar City (Iron), Utah. Lat. 37°40'38" N., Long. 113°03'47" W. C.P. to add freqs. 10,915V and 11,155H MHz towards Blowhard Mountain, Utah, via passive reflector.

3782-C1-P-74, Same (KPX29), Blowhard Mountain, 14 miles SE. of Cedar City (Iron), Utah. Lat. 37°35'20" N., Long. 112°52'01" W. C.P. to add freqs. 11,365V and 11,605H MHz towards Cedar City, Utah, via passive reflector.

3783-C1-P-74, same (KXR39), Little Creek Mountain, 7.8 miles SE. of Hurricane (Washington), Utah. Lat. 37°05'47" N., Long. 113°11'11" W. C.P. to add freqs. 10,755H and 10,995V MHz towards a new point of communication at Hurrican, Utah, via passive reflector.

3784-C1-AL-(4)-74, TV Cables of Mississippi, Inc. Consent to Assignment of License from TV Cables of Mississippi, Inc., Assignor, to Warner—CCC, Inc., Assignee; for stations: KTR20-Leland, Mississippi; KTR21-Alligator, Mississippi; KLT74-Farrell, Mississippi; KLT75-Cleveland, Mississippi.

3785-C1-P-74, Garden State Micro Relay, Inc. (KEM56), 0.55 Miles West of Milmay, New Jersey. Lat. 39°26'21" N., Long. 74°52'03" W. C.P. to add freqs. 6048.9V, 6108.2V MHz (via power split) toward Atlantic City, N.J., on azimuth 102°21'.

3786-C1-P-74, Mountain Microwave Corporation (KBI68), Waterpeak, 1.3 Miles SE. of Montrose (Montrose), Colorado. Lat. 38°23'15" N., Long. 107°40'26" W. C.P. to change antenna system and add point of

communication to Uncompagre, Colo., for freqs. 6078.6H, 6167.6V MHz on azimuth 260°04'.

3797-C1-P-74, Alabama Microwave Inc. (KRR71), Huntsville, Alabama. Lat. 34°44'16" N., Long. 86°32'02" W. C.P. to change point of communication and change freq. to 6152.8V MHz toward Capshaw Mtn., Ala., on azimuth 295°34'.

3788-C1-P-74, Same (KJJ57), Capshaw Mountain, Alabama. Lat. 34°49'05" N., Long. 86°44'16" W. C.P. to add freq. and point of communication on freq. 6286.2V MHz toward Rogersville, Ala., on azimuth 273°29'.

3789-C1-P-74, RCA Alaska Communications, Inc. (New), Off Richardson Highway, Valdez, Alaska. Lat. 61°07'56" N., Long. 146°20'19" W., C.P. for a new station on freq. 2112.4V MHz toward Valdez Terminal, Alaska, on azimuth 208°19'.

3790-C1-P-74, Same (New), Valdez Terminal, 4 Miles South of Valdez, Alaska. Lat. 61°05'07" N., Long. 146°23'28" W. C.P. for a new station on freq. 2162.4V MHz toward Valdez, Alaska, on azimuth 28°16'.

3791-C1-P-74, The Ohio Bell Telephone Company (KVI38), 111 North Fourth Street, Columbus, Ohio. Lat. 39°57'54" N., Long. 82°59'51" W. C.P. to change power on freqs. 6219.5V, 11445H MHz toward Carroll, Ohio, on azimuth 134°20'.

3792-C1-P-74, The Ohio Bell Telephone Company (KQN77), 2.8 Miles SW. of Carroll, Ohio. Lat. 39°46'15" N., Long. 82°44'25" W. C.P. to change power on freqs. 5967.4V, 10995H MHz toward Columbus, Ohio on azimuth 314°30'; freqs. 5982.3H, 11115H MHz toward Maxville, Ohio, on azimuth 115°44'.

3793-C1-P-74, Same (KQN84), 2.5 Miles NW. of Maxville, Ohio. Lat. 39°38'04" N., Long. 82°22'33" W. C.P. to change power on freqs. 6234.3H, 11565H MHz toward Carroll, Ohio, on azimuth 295°58'.

3794-C1-P-74, United Video, Inc. (WQO52), Bald Hill, 8.25 Miles ENE. of Preston, Oklahoma. Lat. 35°44'36" N., Long. 95°50'30" W. C.P. to add freq. 11505 MHz (via power split) toward Sand Spring, Okla., on azimuth 334°38'.

3795-C1-P-74, Same (New), Springfield, Illinois. Lat. 39°45'06" N., Long. 89°34'43" W. C.P. to add new point of communication on freq. 5960.0H MHz toward Taylorville, Ill., on azimuth 133°24'.

3796-C1-P-74, Same (KEZ53), 3 Miles SW. of Taylorville, Illinois. Lat. 39°30'43" N., Long. 89°15'02" W. C.P. to add new point of communication on freq. 5960.0H MHz toward Schram City, Ill., on azimuth 204°01'.

3797-C1-P-74, Same (KEZ51), 0.4 Mile East of Schram City, Illinois. Lat. 39°10'09" N., Long. 89°26'48" W. C.P. to add new point of communication on freq. 6212.0H MHz toward Mt. Olive, Ill., on azimuth 248°27'.

3798-C1-P-74, Same (New), 1.2 Miles NE. of Mt. Olive, Illinois. Lat. 39°05'09" N., Long. 89°42'59" W. C.P. for a new station on freq. 5945.2H MHz toward Alton, Ill., on azimuth 240°42'. (Note: A waiver of Section 21.701(1) is requested by United Video, Inc.)

3799-C1-P-74, United Wehco, Inc. (KEW55), 2.5 Miles NW. of England, Arkansas. Lat. 34°34'31" N., Long. 91°59'24" W. C.P. to add a point of communication on freqs. 6004.5H 6063.8H MHz (via power split) toward Stuttgart, Ark., on azimuth 101°30'.

3800-C1-P-74, Midwestern Relay Company (WIV45), Arden Hills, Minnesota. Lat. 45°03'47" N., Long. 93°09'18" W. C.P. to add freq. 10815V MHz toward a new point of communication at Shoreview, Minnesota, on azimuth 102°11'.

- 3801-C1-P-74, Western Tele-Communications, Inc. (KZA87), East Butte, 32 Miles West of Idaho Falls, Idaho. Lat. 43°30'00" N., Long. 112°39'48" W. C.P. to add freqs. 111/5H, 10895H MHz toward Blackfoot, Idaho on azimuth 143°12'.
- 3802-C1-P-74, American Microwave & Communications, Inc. (KQL24), Nub's Nob, 4.0 Miles NE. of Harbor Springs, Michigan. Lat. 45°28'00" N., Long. 84°54'04" W. C.P. to add freq. 5982.3H MHz (Via power split) toward Petoskey, Mich., on azimuth 209°-24'.
- 3803-C1-MP-74, Southern Pacific Communications Co. (WOF29), Mod. of C.P. to change station location to Firestone Park, Alameda & 83rd Streets, Los Angeles, California. Lat. 33°57'43" N., Long. 118°13'46" W. and to change point of communication of freq. 10895H MHz to Los Angeles, Calif.
- 3804-C1-MP-74, Southern Pacific Communications Company (WOF28), 610 South Main Street, Los Angeles, California. Lat. 34°02'43" N., Long. 118°14'56" W. Mod. of C.P. to change point of communication for freq. 11265H MHz to Firestone Park, Los Angeles, Calif.

MULTIPOINT DISTRIBUTION SERVICE

- 50051-C5-P-74, Digital Paging Systems, Inc. (New), One Penn Plaza, 7th Avenue Between 32nd & 33rd Streets, New York, New York. Lat. 40°44'59" N., Long. 73°59'30" W. C.P. for a new station on freqs. 2160.75 (Visual) and 2156.25 (Aural) (Primary Service Area: New York, New York).
- 50052-C5-P-74, United Video, Inc. (New), Commerce Tower Building, 911 Main Street, Kansas City (Jackson), Missouri. Lat. 39°06'12" N., Long. 94°34'58" W. C.P. for a new station on freq. 2160.75 (Visual) and 2156.25 (Aural) (Primary Service Area: Kansas City, Missouri).
- 50053-C5-P-74, Same (New), Chromalloy Building, 7700 Bonhomme Avenue (St. Louis), Missouri. Lat. 38°38'52" N., Long. 90°20'17" W. C.P. for a new station on freqs. 2160.75 (Visual) and 2156.25 (Aural) (Primary Service Area: St. Louis, Missouri).
- 50054-C5-P-74, Same (New), First National Center Tower Building, N. Robinson and Park Street, Oklahoma City (Oklahoma), Oklahoma. Lat. 35°28'02" N., Long. 97°30'56" W. C.P. for a new station on freqs. 2160.75 (Visual) and 2156.25 (Aural) (Primary Service Area: Oklahoma City, Oklahoma).
- 50055-C5-P-74, Digital Paging Systems, Inc. (New), 100 North Main Building, Memphis (Shelby), Tennessee. Lat. 35°08'52" N., Long. 90°03'05" W. C.P. for a new station on freq. 2160.75 (Visual) and 2156.25 (Aural) (Primary Service Area: Memphis, Tennessee).

[FR Doc.74-9180 Filed 4-19-74;8:45 am]

[FCC 74-354]

COMMUNICATIONS SATELLITE CORP.

Application for Authorization To Participate in Certain INTELSAT Activities; Policy Statement on Procedures

The Communications Satellite Corporation (Comsat), was created pursuant to the provisions of the Communications Satellite Act of 1962 (Satellite Act) to serve as the United States participant in the creation and operation of the global commercial communications satellite system contemplated by that Act. Comsat, as the United States Signatory to the operating agreement of the International Telecommunications Satellite Organization (INTELSAT), is a member

of the Board of Governors of INTELSAT and discharges certain of its functions in that respect in accordance with instructions from the United States Government.¹ In addition to, and apart from, the general governmental instructional process, Comsat, as a communications common carrier, must secure authorization from the Commission pursuant to the Communications Act of 1934 and the Satellite Act before it may participate in certain INTELSAT activities. Experience has demonstrated the necessity for supplementing existing procedures by establishing more definite guidelines for securing such authorizations.

The global communications satellite system has now been established and the Definitive Arrangements for INTELSAT have recently come into effect. The Commission believes that it is now appropriate to set forth specific procedures to be followed in those instances where Comsat is required by statute to obtain authorizations from the Commission to participate in the construction or operation of INTELSAT satellite facilities.² These procedures are designed to provide opportunity for comment by interested parties, to encourage efficiency, and to promote the public interest. They are comparable to those applicable to the authorization of other types of communications facilities. The Commission recognizes, of course, that there are certain additional factors which must be taken into account with respect to Comsat in connection with these procedures in view of its role in INTELSAT and the role assigned to the Executive Branch under the provisions of section 201(a) of the Satellite Act.

To achieve the foregoing objectives, the Commission will require Comsat, in those cases where Commission authorization is necessary, to submit applications for the necessary authority prior to the time such matters are considered by the Board of Governors of INTELSAT. Such applications will be submitted and considered under the applicable procedures, timetables and criteria of the Communications Act, the Communications Satellite Act, applicable Commission Rules and Regulations, and as supplemented herein. This procedure will provide interested parties with the opportunity to present their views on such applications to the Commission, and is designed to afford the Commission time to consider fully Comsat's applications and all filings with respect thereto prior to the time the matter is presented to the Board of Governors for action. Specifically, Comsat will be required to submit applications for such authority as may be required at the earliest practicable date after the

¹ Such instructions are issued by the Department of State (DOS) pursuant to determinations mutually arrived at in coordination with the Office of Telecommunications Policy (OTP) and the Federal Communications Commission (Commission).

² Specifically, these procedures are applicable to authorizations required pursuant to Title III and Section 214 of the Communications Act and section 201(c) of the Satellite Act.

proposed facilities or operational programs have become defined to the point where specific designs, operational configurations, services and service dates are under review and there is a reasonable probability that a proposal will be presented to the Board of Governors for consideration. In many cases an appropriate time for filing an application may well be shortly after release of the request for proposals (RFP) for facilities and/or services that would be required should the Board at a later date adopt a specific proposal relating to the construction of new or modified facilities or services. Where such proposals, if adopted by INTELSAT, would involve a substantial investment by Comsat, the most comprehensive review will be required, and it is expected that applications will be filed by Comsat well in advance of the date the Board may take final action on the matter.³ Although all technical, operational, financial and other details of the final proposal may not be known with precision when the initial application is filed, Comsat will be expected to file promptly appropriate modifications to its applications reflecting any significant changes or additions and, in any event, at least 60 days before anticipated Board action.⁴ With regard to Comsat's participation in other INTELSAT activities requiring Commission authorization, Comsat will be required to submit appropriate applications no later than 60 days prior to anticipated action on the proposed item by the Board.⁵ Such applications would

³ Time must be available for interested parties to submit comments, and for the Commission to properly consider the need for, and value of, additional or new facilities, the feasibility of alternative proposals, and to conduct a hearing if it so determines that one is warranted. Public notice will be given by the Commission of acceptance for filing of Comsat's applications and major amendments with respect thereto. Such applications and amendments, as well as supporting documents, will be available for public inspection unless the Commission determines otherwise for good cause shown.

⁴ Prior to the filing of an initial application, Comsat will be expected to keep the Commission fully and promptly informed on a continuing basis concerning those programs which INTELSAT has under consideration or study which relate to new or modified satellite facilities and for which documentation has been made available to Comsat as U.S. Signatory. This should include relevant technical and economic information and supporting arguments with respect to all alternatives being considered for such programs. When considered necessary, the Commission may take appropriate steps to keep interested parties advised during this pre-application period.

⁵ When factors beyond the control of Comsat make it impossible to submit such an application or a major amendment by the specified 60-day deadline, Comsat should notify the Commission as soon as it becomes aware of such conditions, and the Commission will, upon a proper showing by Comsat, consider expedited procedures geared to the particular circumstances which do not deprive interested parties of an opportunity for meaningful comment. In any event, however, Comsat will be required to submit such completed applications no later than 30 days prior to anticipated action by the Board.

include, but are not limited to, requests to participate in the launch, testing and use by Comsat of INTELSAT satellites; and modifications not involving substantial investment by Comsat to on-going INTELSAT programs for which Comsat's participation has been authorized.

Upon reaching its determination on Comsat applications, the Commission will notify the Department of State accordingly. The timing and method of release of the Commission decision to interested parties and/or the general public will be decided after consultation with the Department of State on a case-by-case basis, taking into consideration all relevant factors including foreign policy considerations.

Adopted: April 9, 1974.

Released: April 11, 1974.

FEDERAL COMMUNICATIONS
COMMISSION,
VINCENT J. MULLINS,
Secretary.

[FR Doc. 74-9175 Filed 4-19-74; 8:45 am]

[Tariff No. 254; Docket No. 18935]

WESTERN UNION TELEGRAPH CO.
Autodin Service; Extension of Time for
Comments

Counsel for Western Union Telegraph Company and for the Department of Defense (DOD) have requested further extensions of time in which to file proposed findings and conclusions and reply findings in the above-captioned proceeding. The proposed findings and conclusions are presently due to be filed by April 15, 1974, and reply findings are due by June 15, 1974.

The basis for the request is the continuation of settlement discussions between Western Union and DOD.

As counsel for both Western Union and DOD report that numerous meetings have been held, that considerable progress has been made and that additional meetings are necessary in order to further explore possible approaches to settlement, we find that good cause has been shown for granting the extensions.

Therefore, pursuant to the authority delegated to the Chief, Common Carrier Bureau, under § 0.303(c), the date by which proposed findings and conclusions must be filed in this proceeding is changed from April 15, 1974, to June 3, 1974, and the date by which reply findings must be filed is changed from June 15, 1974, to August 5, 1974.

Adopted: April 12, 1974.

Released: April 15, 1974.

[SEAL] KELLEY E. GRIFFITH,
Acting Chief,
Common Carrier Bureau.

[FR Doc. 74-9176 Filed 4-19-74; 8:45 am]

NATIONAL INDUSTRY ADVISORY
COMMITTEE

Special NIAC Working Group Emergency
Alerting of the General Public; Meeting

Pursuant to the provisions of Pub. L. 92-463, announcement is made of a public meeting of the Special NIAC Working Group, Emergency Alerting of the General Public, to be held Wednesday, May 1, 1974. The committee will meet at the FCC (Annex), 1229-20th Street, NW, at 10:00 A.M. in the Training Room A-110.

Purpose. To consider, prepare and submit recommendations to the Federal Communications Commission on means of alerting the general public during an emergency.

Agenda. Agenda for the meeting is as follows:

ITEM:

1. Examine the possibility of using cartridge tape as the generating source of the two-tone alerting system.
2. Update the report previously submitted by the Special Working Group, on the alerting of the general public during an emergency, to make it a final report.
3. New business.

It is suggested that those desiring more specific information about the meeting, telephone the Emergency Communications Division, FCC (202) 632-7232.

FEDERAL COMMUNICATIONS
COMMISSION,

[SEAL] VINCENT J. MULLINS,
Secretary.

[FR Doc. 74-9178 Filed 4-19-74; 8:45 am]

HEFTEL BROADCASTING CORP.
Standard Broadcast Application Available
for Processing

The application (File No. BP-19423) of Heftel Broadcasting Corporation for a construction permit to change frequency of station KPUA, Hilo, Hawaii, from 970 kHz, 5 kW, U, to 620 kHz, 5 kW, U, has been amended to specify the same power and hours of operation on 670 kHz. Since this change in proposed frequency constitutes a major amendment as defined in § 1.571(a) of the rules, § 1.571(j)(1) requires that a new file number be assigned. Thus, the applicant's previously assigned "cut-off" date of August 29, 1973 (Public Notice released July 19, 1973, No. 04799), is no longer applicable and a new "cut-off" date is required. Accordingly, notice is hereby given, pursuant to § 1.571(c) of the Commission's rules, that on May 24, 1974, the aforementioned application will be considered as ready and available for processing. Pursuant to § 1.227(b)(1) and § 1.591(b) of the rules, an application, in order to be afforded comparative consideration with that application must be substantially complete and tendered for filing at the offices of the Commission in Wash-

ington, D.C., by the close of business on May 23, 1974.

The attention of any party in interest desiring to file pleadings concerning this application, pursuant to section 309(d)(1) of the Communications Act of 1934, as amended, is directed to § 1.580(i) of the Commission's rules for the provisions governing the time of filing and other requirements relating to such pleadings.

The new file number assigned to this application is BP-19630.

Adopted: April 12, 1974.

Released: April 15, 1974.

FEDERAL COMMUNICATIONS
COMMISSION,

[SEAL] VINCENT J. MULLINS,
Secretary.

[FR Doc. 74-9179 Filed 4-19-74; 8:45 am]

[Dockets Nos. 19996; 19997]

DANVILLE BROADCASTING CO. AND
HENDRICKS COUNTY BROADCASTING
CORP.; DANVILLE, IND.

Applications for Construction Permits;
Hearing

In re applications of Charles R. Banks and Maudena J. Banks, d/b as Danville Broadcasting Co. Danville, Indiana; Docket No. 19996, File No. BPH-8257; Requests: 107.1 MHz, #296; 3 kW (H & V); 300 feet and Hendricks County Broadcasting Corp. Danville, Indiana, Docket No. 19997, File No. BPH-8463; Requests: 107.1 MHz, #296; 3 kW (H & V); 300 feet for construction permits.

1. The Commission, by the Chief, Broadcast Bureau, acting pursuant to delegated authority, has under consideration the above-captioned applications which are mutually exclusive in that they seek the same channel in the same community.

2. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

3. Accordingly, it is ordered, That pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine which of the proposals would, on a comparative basis, better serve the public interest.

2. To determine, in the light of the evidence adduced pursuant to the foregoing issue, which of the applications should be granted.

4. It is further ordered, That, to avail themselves of the opportunity to be

heard, the applicants herein, pursuant to § 1.221(c) of the Commission's rules, in person or by attorney, shall, within 20 days of the mailing of this Order, file with the Commission in triplicate, a written appearance stating an intention to appear, on the date fixed for the hearing and present evidence on the issues specified in this Order.

5. It is further ordered, That the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 1.594 of the Commission's rules, give notice of the hearing, either individually or, if feasible and consistent with the rules, jointly, within the time and in the manner prescribed in such rule, and shall advise the Commission of the publication of such notice as required by § 1.594(g) of the rules.

Adopted: April 8, 1974.

Released: April 11, 1974.

FEDERAL COMMUNICATIONS
COMMISSION,

[SEAL] WALLACE E. JOHNSON,
Chief, Broadcast Bureau.

[FR Doc.74-9181 Filed 4-19-74;8:45 am]

FEDERAL POWER COMMISSION

[Docket Nos. RI74-156, et al.]

RATE CHANGES

Order Providing for Hearing on and Suspension of Proposed Changes, and Allowing Changes To Become Effective Subject to Refund¹

APRIL 12, 1974.

Respondents have filed proposed changes in rates and charges for jurisdictional sales of natural gas, as set forth in Appendix A hereof.

The proposed changed rates and charges may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is in the public interest and consistent with the Natural Gas Act that the Commission enter upon hearings regarding the lawfulness of the proposed changes, and that the supplements herein be suspended and their use be deferred as ordered below.

The Commission orders: (A) Under the Natural Gas Act, particularly sec-

¹ Does not consolidate for hearing or dispose of the several matters herein.

tions 4 and 15, the Regulations pertaining thereto (18 CFR, Chapter I), and the Commission's Rules of Practice and Procedure, public hearings shall be held concerning the lawfulness of the proposed changes.

(B) Pending hearings and decisions thereon, the rate supplements herein are suspended and their use deferred until date shown in the "Date Suspended Until" column. Each of these supplements shall become effective, subject to refund, as of the expiration of the suspension period without any further action by the Respondent or by the Commission. Each Respondent shall comply with the refund procedure required by the Natural Gas Act and § 154.102 of the regulations thereunder.

(C) Unless otherwise ordered by the Commission, neither the suspended supplements, nor the rate schedules sought to be altered, shall be changed until disposition of these proceedings or expiration of the suspension period, whichever is earlier.

By the Commission.

[SEAL] KENNETH F. PLUMB,
Secretary.

APPENDIX A

Docket No.	Respondent	Rate schedule No.	Supplement No.	Purchaser and producing area	Amount of annual increase	Date filing tendered	Effective date unless suspended	Date suspended until	Cents per Mcf*		Rate in effect subject to refund in dockets Nos.
									Rate in effect	Proposed increased rate	
RI74-166...	Getty Oil Co.....	79	¹ 1-12	West Texas Gathering Co. (Emperor (Ellenburger) Field, Winkler County, Tex.) (Permian Basin).	\$94,854	3-12-74		² 7-21-74	29.5103	42.1575	
RI74-12...	Hondo Oil & Gas Co.....	5	1-5	Transwestern Pipeline Co. (Bell Lake Field, Lea County, N. Mex.) (Permian Basin).	127	3-15-74		3-16-74	22.86	23.6563	
RI74-157...	Clinton Oil Co.....	58	⁶ 7	El Paso Natural Gas Co. (Sonora Field, Sutton County, Tex.) (Permian Basin).	29,025	3-18-74	4-18-74	¹⁵ Accepted (16)	18.5	41.0	
		63	³ 11	Northern Natural Gas Co. (Sonora Field, Sutton County, Tex.) (Permian Basin).	40,725	3-18-74	4-18-74	¹⁵ Accepted	25.69	41.0	
			⁹ 12			3-18-74		9-18-74			
RI73-245...	Cities Service Oil Co.....	124	¹⁰ 1-15	West Texas Gathering Co. (Emperor Devonian Field, Winkler County, Tex.) (Permian Basin).	91,038	3-18-74		³ 6-14-74	23.95	42.1575	
RI74-158...	Continental Oil Co.....	180	¹² 14	Transwestern Pipeline Co. (Bell Lake Area (Atoka Formation), Lea County, N. Mex.) (Permian Basin).	4,522	3-19-74		9-10-74	34.90	44.95	
RI74-159...	Skelly Oil Co.....	248	¹⁴ 6	El Paso Natural Gas Co. (acreage in Terrell County, Tex.) (Permian Basin).	53	3-13-74		10-18-74	35.0	35.35	

* Unless otherwise stated, the pressure base is 14.65 lb/in²a.

¹ Substitute increase for prior periodic increase to 30.5642 cents per Mcf suspended in docket No. RI74-156.

² Date prior periodic increase would become ESR.

³ Contract amendment.

⁴ Subject to quality adjustments pursuant to opinion No. 662.

⁵ Applicable only to production from additional wells drilled pursuant to supplement No. 6—rate for other production remains at 18.5 cents per Mcf.

⁶ Not used.

⁷ Not used.

⁸ Applicable only to production from additional wells drilled pursuant to supplement No. 11—rate from other production remains at 25.69 cents per Mcf.

⁹ Amended by letter dated Mar. 26, 1974.

¹⁰ Substitute increase for prior periodic increase to 29.109 cents per Mcf suspended in docket No. RI73-245 only.

¹¹ Includes quality adjustments.

¹² Applicable only to sales of "new" gas from the Atoka formation pursuant to supplement No. 11.

¹³ Subject to quality adjustment (including Btu adjustment).

¹⁴ Amended by letter dated Mar. 20, 1974.

¹⁵ Accepted to be effective on the date set forth in the "Effective date unless suspended" column.

¹⁶ The proposed rate increase is accepted as of Apr. 18, 1974 insofar as it does not exceed the opinion No. 662 ceiling and is suspended until Sept. 18, 1974, insofar as it exceeds the opinion No. 662 ceiling rate.

The proposed rate increases filed by Getty Oil Co. and Cities Service Oil Co. represent favored nations increases which they propose to substitute for periodic increases that was suspended until July 21, 1974, and June 14, 1974, respectively.

The proposed rate increase of Hondo Oil & Gas Company reflects an increase to a rate that was under suspension at the time of issuance of Opinion No. 662, and consistent with prior Commission action in other cases, it is suspended for one day from the date of filing.

The remaining proposed increases exceed the applicable area ceiling rate and are suspended for five months.

[FR Doc.74-8999 Filed 4-19-74;8:45 am]

[Docket No. CI70-1143, et al.]

SALE OF NATURAL GAS TO LONE STAR GAS CO. BY VARIOUS COMPANIES

Abandonments of Service; Termination of Certificates; Cancellation of Gas Rate Schedules

APRIL 12, 1974.

Each Applicant herein has filed pursuant to Section 7(b) of the Natural Gas Act an application for permission and approval to abandon the sale for resale of natural gas in interstate commerce to Lone Star Gas Co. (Lone Star), all as more fully set forth in applications in this proceeding and in the appendix hereto.

Some Applicants have on file with the Commission FPC gas rate schedules and others are making sales under small producer certificates. In cases where Applicants propose to abandon service completely and have rate schedules, the certificates authorizing such sales will be terminated and the related rate schedules cancelled.

Each application is related to Lone Star's rearrangement of its system in such a manner as to divert the gas that was sold in the interstate market to the intrastate market. Lone Star's realignment was authorized by the Commission order in Docket No. CP70-313 on December 18, 1972 (48 FPC 1438).

After due notice by publication in the Federal Register, no petition to intervene, notice of intervention or protest to the granting of the applications has been filed.

At a hearing held on April 3, 1974, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the applications and exhibits thereto, submitted in support of the authorizations sought herein, and upon consideration of the record,

The Commission finds:

(1) Each Applicant herein is a "natural-gas company" with the meaning of the Natural Gas Act as heretofore found by the Commission.

(2) The sales of natural gas proposed to be abandoned, as hereinbefore described and as more fully described in the applications and in the Appendix hereto, are subject to the requirements of subsection (b) of section 7 of the Natural Gas Act.

(3) The abandonments proposed by Applicants are permitted by the public convenience and necessity and should be approved as hereinafter ordered.

(4) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that the certificates other than the small producer certificates, heretofore issued to Applicants, relating to the complete abandonments herein-after permitted and approved, should be terminated.

The Commission orders:

(A) Permission for and approval of the abandonments of service by Applicants, as hereinbefore described and as more fully described in the applications and Appendix hereto, are granted.

(B) Applicant in Docket No. CI70-1143, Skelly Oil Co., shall file a notice of cancellation of its FPC Gas Rate Schedule No. 214 within 30 days of the date of this order. Its certificate in Docket No. CI66-468 is terminated.

(C) The certificates issued in the fol-

lowing dockets, which are related to the abandonments herein permitted and approved, are terminated:

Abandonment authorization	Terminated certificate
CI71-2	G-12597
CI71-14	CI65-1268
CI71-28	CI67-1715
CI71-29	CI67-1194
CI71-63	G-8523
CI71-101	CI67-1757
CI71-269	CI67-170
CI71-270	CI68-617
CI71-271	CI67-50
CI71-272	CI62-1370
CI71-273	CI62-1374
CI71-350	CI65-242

(D) The notices of cancellation of Applicants' FPC gas rate schedules are accepted for filing effective the date of this order and are designated as set forth in the Appendix hereto.

By the Commission.

[SEAL] KENNETH F. PLUMB,
Secretary.

APPENDIX

Docket No. and date filed	Applicant	Purchaser and location	FPC gas rate schedule		
			Description and date of document ^{1,2}	No.	Supp.
CI70-1143 B 6-30-70	Skelly Oil Co.	Lone Star Gas Co., Pone Field, Rusk County, Tex.	(3)		
CI71-2 B 7-9-70	Cities Service Oil Co.	Lone Star Gas Co., Red Springs Field, Smith County, Tex.	Notice of cancellation 7-2-70.	179	4
CI71-14 B 7-7-70	Sun Oil Co. (operator) et al.	Lone Star Gas Co., Shamburger Lake Field, Smith County, Tex.	Notice of cancellation 6-26-70.	186	3
CI71-28 B 7-13-70	Gulf Oil Corp.	Lone Star Gas Co., Henderson Field, Rusk County, Tex.	Notice of cancellation 7-10-70.	390	8
CI71-29 B 7-13-70	do.	Lone Star Gas Co., Danville Field, Gregg County, Tex.	Notice of cancellation 7-10-70.	386	6
CI71-60 B 7-27-70	J. C. Trahan, Drilling Contractor, Inc. (operator), et al.	Lone Star Gas Co., Pone Field, Rusk County, Tex.	(4)		
CI71-63 B 7-27-70	Exxon Corp. (operator) et al.	Lone Star Gas Co., Red Springs Field, Smith County, Tex.	Notice of cancellation 7-21-70.	108	16
CI71-94 B 7-24-70	Geological Exploration Co.	Lone Star Gas Co., Henderson (Petlet) Field, Rusk County, Tex.	(4)		
CI71-101 B 8-5-70	Carter-Jones Drilling Co. (operator) et al.	Lone Star Gas Co., Carthage Field, Panola County, Tex.	Notice of cancellation 7-28-70.	2	10
CI71-269 B 9-23-70	Texaco, Inc. (operator) et al.	Lone Star Gas Co., Danville Field, Gregg and Rusk Counties, Tex.	Notice of cancellation 9-21-70.	380	6
CI71-270 B 9-23-70	do.	Lone Star Gas Co., Willow Springs Field, Gregg County, Tex.	do.	410	7
CI71-271 B 9-23-70	Texaco, Inc.	Lone Star Gas Co., Henderson Field, Rusk County, Tex.	do.	372	3
CI71-272 B 9-23-70	Texaco, Inc. (operator) et al.	Lone Star Gas Co., West Chapel Hill Field, Smith County, Tex.	do.	299	9
CI71-273 B 9-32-70	Texaco, Inc.	Lone Star Gas Co., Manziel Field, Wood County, Tex.	do.	300	9
CI71-350 B 10-19-70 ³	Mobil Oil Corp.	Lone Star Gas Co., Penn-Griffith Field, Rusk County, Tex.	Notice of cancellation 10-15-70.	363	2

¹ The effective date is the date of this order.

² Lone Star was granted authorization in docket No. CP70-313 on Dec. 18, 1972, to rearrange its system in such a manner as to divert the subject gas from interstate commerce to intrastate commerce. Applicant's filing was made to reflect the change in the classification of its sale to Lone Star.

³ No related rate filing. See ordering paragraph (B) herein.

⁴ Small producer abandonment; there is no active rate schedule on file with the Commission for this sale.

⁵ By supplement filed Mar. 21, 1974, Mobil advised that the subject lease has expired and the wells have been plugged and abandoned.

Filing code: A—Initial service.
B—Abandonment.
C—Amendment to add acreage.
D—Amendment to delete acreage.
E—Succession.
F—Partial succession.

See footnotes at end of table.

[FR Doc.74-9000 Filed 4-19-74;8:45 am]

[Docket Nos. RP73-104, RP74-57, RP73-84]

EL PASO NATURAL GAS CO.**Order Amending Prior Order**

APRIL 15, 1974.

On March 1, 1974 the Commission issued an order granting interventions in these proceedings. Although the body of the order listed Southern California Edison Company as one of the untimely petitioners, the company's name was inadvertently omitted from paragraph (2) of the Commission findings. We shall correct this omission.

The Commission orders:

(A) At finding paragraph (2) of the Commission order granting interventions in these proceedings, issued March 1, 1974, "Southern California Edison Company" shall be inserted immediately following "The California Gas Producers Association."

(B) The Secretary shall cause prompt publication of this order in the FEDERAL REGISTER.

By the Commission.

[SEAL] **KENNETH F. PLUMB,**
Secretary.

[FR Doc.74-9110 Filed 4-19-74;8:45 am]

[Docket No. RP73-43]

MID LOUISIANA GAS CO.**Notice of Proposed Change in Rates**

APRIL 15, 1974.

Take notice that Mid Louisiana Gas Company (Mid Louisiana) on April 8, 1974, tendered for filing as a part of First Revised Volume No. 1 of its FPC Gas Tariff, Substitute Seventh Revised Sheet No. 3a.

Mid Louisiana states that the purpose of the filing is to reflect a purchased gas cost current adjustment to Mid Louisiana's Rate Schedules G-1, SG-1, I-1, and E-1; that the revised tariff sheet and supporting information are being filed to coincide with a major rate increase by United Gas Pipe Line Company, one of Mid Louisiana's gas suppliers and that the filing is being made in accordance with section 19 of Mid Louisiana's FPC Gas Tariff and in compliance with Commission Order dated March 29, 1974 in Docket No. RP74-20 et al and with Commission Order Nos. 452 and 452-A; and that copies of the filing were served on interested customers and state commissions.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before April 29, 1974. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this

application are on file with the Commission and are available for public inspection.

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc.74-9112 Filed 4-19-74;8:45 am]

[Docket No. E-7777]

PACIFIC GAS AND ELECTRIC CO.**Extension of Time and Postponement of Hearing**

APRIL 15, 1974.

On April 5, 1974, The Cities of Alameda, Healdsburg, Lodi, Lompoc, Santa Clara, and Ukiah, California (Cities) filed a motion for an extension of the procedural dates fixed by order issued March 14, 1974, in the above-designated matter. The motion states PG&E and Cities have contacted all parties, including Staff Counsel, and there is no objection.

Upon consideration, notice is hereby given that the procedural dates are modified as follows:

Cities and Northern California Power Agency
Service Date, July 11, 1974.

Staff Service Date, July 15, 1974.

Rebuttal Service Date, July 29, 1974.

Hearing, August 13, 1974 (10:00 a.m. e.d.t.).

KENNETH F. PLUMB,
Secretary.

[FR Doc.74-9106 Filed 4-19-74;8:45 am]

[Docket No. E-8446]

PENNSYLVANIA ELECTRIC CO.**Notice of Extension of Time**

APRIL 15, 1974.

On April 9, 1974, Staff Counsel filed a motion for an extension of Staff's service date fixed by notice issued February 21, 1974. The motion states that the Company has no objection to the motion.

Upon consideration, notice is hereby given that the date is extended to April 30, 1974, within which Staff may file its testimony in this matter. The other dates remain unchanged.

KENNETH F. PLUMB,
Secretary.

[FR Doc.74-9107 Filed 4-19-74;8:45 am]

[Docket No. G-8817, etc.]

**ABANDONMENT OF SERVICE AND
TERMINATION OF SALES****Certain Companies**

APRIL 3, 1974.

In the findings and order after statutory hearing permitting and approving abandonments of service et al., issued March 12, 1974 and published in the FEDERAL REGISTER March 20, 1974, 39 FR 10484.

Page 10485 last column, please change Supplement No. 56 to read 58.

KENNETH F. PLUMB,
Secretary.

[FR Doc.74-9111 Filed 4-19-74;8:45 am]

[Docket No. CP74-261]

MIDWESTERN GAS TRANSMISSION CO.**Notice of Application**

APRIL 16, 1974.

Take notice that on April 5, 1974, Midwestern Gas Transmission Company (Applicant), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP74-261 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of a portable compressor and related piping facilities, all as more fully set forth in the application, which is on file with the Commission and open to public inspection.

Applicant seeks authorization to construct and operate one portable 3,500 horsepower compressor unit for use on its southern natural gas transmission system and to construct required associated piping to install said unit at compressor stations in Portland, Tennessee, Hartford, Kentucky, Petersburg, Indiana, and Potomac, Illinois. Applicant proposes to construct the facilities during the 1974 construction season. The portable compressor unit would also be connected through existing facilities at Applicant's compressor station in Paris, Illinois.

Applicant estimates the cost of the facilities to be \$1,329,640, to be financed initially from cash on hand, the sale of temporary investments or advances from an associated company. Applicant states these facilities may later be permanently financed through the issuance of bonds or debentures.

Applicant states that the pattern of its deliveries on its Southern system has changed in recent years, necessitating continuous running of the system's compressor units, and that the new facilities are needed to enable Applicant to take the compressor units off the line in order to perform required routine maintenance.

Applicant further states that this proposal will not increase its peak day capacity. No increase in service is proposed or offered to any customers.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 7, 1974, file with the Federal Power Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the

Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matters finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.74-9102 Filed 4-19-74;8:45 am]

NORTHERN NATURAL GAS CO.

[Docket No. CP67-344]

Notice of Petition To Amend

APRIL 16, 1974.

Take notice that on April 8, 1974, Northern Natural Gas Company (Petitioner), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP67-344 a petition to amend the order of the Commission issuing a certificate of public convenience and necessity in said docket on September 21, 1967 (38 FPC 653), as amended on October 29, 1973 (50 FPC _____), pursuant to section 7(c) of the Natural Gas Act by authorizing the continuation of sales for resale of natural gas to Pioneer Natural Gas Company (Pioneer), all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Pursuant to the order issued September 21, 1967, Petitioner was authorized, inter alia, to render natural gas service to Pioneer from El Paso Natural Gas Company's Plains-to-Dumas pipeline (Dumas Line). This order was amended by the order of October 29, 1973, which provided for delivery of up to 85,000 Mcf of gas per day and 2,500,000 Mcf of gas annually for a term extending from April 1, 1973, through October 1, 1973. Said sales were made pursuant to Petitioner's Rate Schedule X-36.

Petitioner states that it has entered into an agreement, proposed Rate Schedule X-42, with Pioneer extending the service on the Dumas Line for a primary term ending October 1, 1975, whereby Petitioner will cause to be delivered to Pioneer up to 85,000 Mcf of gas per day during the period April 1, 1974, to October 1, 1974, and up to 75,000 Mcf of gas per day during the period April 1, 1975, to October 1, 1975. Sales during either period would be limited to 2,500,000 Mcf of gas. The petition states that the gas delivered to Pioneer will be resold primarily for irrigation pump engine fuel.

Petitioner states that no additional facilities will be required to render service

under proposed Rate Schedule X-42. Pioneer will pay Petitioner for such volumes at the applicable rate per Mcf as set forth on Sheet 1c of Petitioner's FPC Gas Tariff, Original Volume No. 2, as may be effective from time-to-time. Petitioner states that it commenced sales of 40,000 Mcf of gas per day on March 6, 1974, on a "best efforts" basis, under the terms of Rate Schedule X-36, within the contemplation of § 157.22 of the regulations under the Natural Gas Act (18 CFR 157.22).

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before May 7, 1974, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc.74-9103 Filed 4-19-74;8:45 am]

[Docket No. R-472]

REPORT OF SUPPLY AND REQUIREMENTS, FPC FORM NO 16

Findings and Order Granting Waiver

APRIL 15, 1974.

By Order No. 489 issued August 24, 1973, in Docket No. R-472 (50 FPC _____), the Commission promulgated § 260.12, Statements and Reports (Schedules), Subchapter G—Approved Forms, Natural Gas Act, 18 CFR Chapter I to prescribe FPC Form No. 16, Report of Supply and Requirements, to be filed by natural gas pipeline companies making sales of natural gas for resale in interstate commerce. The Commission stated in Order No. 489 that it would consider requests by any company for waiver of the requirement to file Form No. 16 and would grant such requests upon good cause being shown. By Commission orders issued November 7, 1973, and February 20, 1974, eight and thirteen, companies respectively, were granted waivers. Four additional natural gas companies have filed requests for waiver of the requirement to file Form No. 16.

Alabama-Tennessee Natural Gas Company (Alabama-Tennessee) states that filing of a Form No. 16 would be duplicated by the Form No. 16 filed by its sole supplier of natural gas, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. A review of Alabama-Tennessee's Form No. 2 for 1972 filed pursuant to Section 260.1 of the Commission's Statements and Reports (Schedules) indicates that the company

makes nineteen interstate sales for resale under three rate schedules, as well as seven mainline industrial sales. In addition, it has no local distribution operations. The Commission did not intend to extend the waiver of filing requirements to interstate pipeline companies such as Alabama-Tennessee which sell substantial volumes of natural gas to numerous distributors for resale.¹ Therefore, Alabama-Tennessee's request for waiver will be denied.

Southwest Gas Corporation's (Southwest) filing of a Form No. 16 for its interstate system would be duplicated by the Form No. 16 filed by its suppliers, Northwest Pipeline Corporation (Northwest). A review of Southwest's Form No. 2 for 1972 indicates that the company has four separate systems, two in Nevada, one in Arizona, and one in San Bernardino County, California. Its interstate Northern Nevada system which is supplied by Northwest is operated substantially for retail distribution with two sales for resale. The Southern Nevada and Arizona systems are intrastate systems and are supplied by El Paso Natural Gas Company. The San Bernardino system is an intrastate system which is supplied by Pacific Gas and Electric Company. Thus, Southwest is primarily an intrastate retail gas distributor. On or before April 30, 1974, Northwest is required to file its Form No. 16 which will include the necessary information relative to Southwest's interstate system in northern Nevada.

The Inland Gas Company, Inc. (Inland) filed a request for a waiver to the requirement to file Form No. 16. Since it neither produces nor purchases gas for sale for resale, therefore, its request will be granted.

Baca Gas Gathering System, Inc. (Baca), filed a request for a waiver to the requirement to file Form No. 16 because it is a gatherer of natural gas which it delivers exclusively to Panhandle Eastern Pipeline Company (Panhandle), with the exception of a minor amount of gas which it delivers for irrigation gas engine purposes. Baca's filing of a Form No. 16 would be duplicated by Panhandle which will include Baca's supply in its Form No. 16.

The Commission finds:

(1) Alabama-Tennessee has failed to demonstrate good cause for waiver of the requirement to file Form No. 16.

(2) Good cause having been shown, it is necessary and appropriate in carrying out the provisions of the Natural Gas Act that the requests of Southwest, Baca, and Inland for waiver of the requirement to file Form No. 16 should be granted.

The Commission orders:

(A) Alabama-Tennessee Natural Gas Company's request for waiver of the requirement to file Form No. 16 is denied.

¹ The waivers granted by the Commission in its November 7, 1973, and February 20, 1974, orders were for companies that were primarily retail gas distributors that made little or no sales for resale or that were gatherer-type pipelines. Alabama-Tennessee is not in either of these categories.

(B) Subject to further review the requests of Southwest Gas Corporation, Inland Gas Company, Inc., and Baca Gas Gathering System, Inc., for waiver of the requirements to file Form No. 16 are granted.

By the Commission.

[SEAL] KENNETH F. PLUMB,
Secretary.

[FR Doc.74-9101 Filed 4-19-74;8:45 am]

FEDERAL RESERVE SYSTEM

BANKERS TRUST NEW YORK CORP.

Proposed Acquisition of California Bankers Trust Co.

Bankers Trust New York Corporation, New York, New York, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y, for permission to acquire voting shares of California Bankers Trust Company, Los Angeles, California. Notice of the application was published on March 14, 1974, in the Los Angeles Times, a newspaper circulated in Los Angeles, California, and on March 14, 1974, in The Wall Street Journal, a newspaper circulated in Palo Alto, California.

Applicant states that the proposed subsidiary would perform the functions that may be carried on by a trust company in the manner authorized by State law, so long as the institution does not both accept demand deposits and make commercial loans. Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question should be accompanied by a statement summarizing the evidence the person requesting the hearing proposes to submit or to elicit at the hearing and a statement of the reasons why this matter should not be resolved without a hearing.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of New York.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than May 10, 1974.

Board of Governors of the Federal Reserve System, April 12, 1974.

[SEAL] THEODORE E. ALLISON,
Assistant Secretary of the Board.

[FR Doc.74-9085 Filed 4-19-74;8:45 am]

CAROLINA BANCORP, INC.

Order Approving Acquisition of Friendly Loan Company, Inc. and Denying Acquisition of National Finance Company, Inc.

Carolina Bancorp, Inc., Sanford, North Carolina, a bank holding company within the meaning of the Bank Holding Company Act, has applied, in separate applications, for the Board's approval, under section 4(c)(8) of the Act and § 225.4(b)(2) of the Board's Regulation Y, to acquire all of the voting shares of National Finance Company, Inc. ("National") and The Friendly Loan Company, Inc. ("Friendly"), both of Rockingham, North Carolina, companies that engage in the activities of consumer finance, dealer financing and acting as sales agent for credit life, and credit accident and health insurance on loans in connection therewith. Such activities have been determined by the Board to be closely related to banking (12 CFR 225.4(a)(1) and (9)).

Notice of the applications, affording opportunity for interested persons to submit comments and views on the public interest factors, have been duly published (38 FR 34834). The time for filing comments and views has expired, and none has been timely received.

Applicant is a recently formed bank holding company and controls one bank, The Carolina Bank, Sanford, North Carolina ("Bank") (deposits of \$71.6 million), representing 0.7 percent of total commercial bank deposits in the State.¹ Bank operates 12 branches in five counties (Wake, Harnett, Lee, Moore, and Chatham Counties) throughout North Carolina.

National and Friendly ("Companies") are both licensed small loan companies regulated by the North Carolina Consumer Finance Act² and had combined total assets of \$3.4 million at year end 1972.³ Each company has one subsidiary which holds a small amount of dealer originated paper but is otherwise not an operating entity. Companies, which are commonly owned and managed, also sell credit life and credit accident and health insurance to its borrowers.

Friendly operates its only office in Rockingham, North Carolina, and has approximately \$600,000 of total loans outstanding. National, while headquartered in Rockingham, does not make any loans in that location; it operates 12 loan offices in 10 counties in the central and eastern portion of the State and has total loans outstanding of \$2.6 million. Companies' product for considering the competitive aspects of this proposal is personal installment loans; the relevant geographic market for these types of loans is approximated by the county in which each of Companies' offices is located.

¹ All banking data are as of June 30, 1973.

² The loan limit for a small loan company is \$900; the effective maximum interest rates on these loans start at 18 percent add-on for a loan less than \$300 and gradually decreases to 8 percent add-on for that portion of a loan in excess of \$600.

³ Unless otherwise noted, all financial data are as of December 31, 1972.

National and Bank make personal installment loans in four common market areas in the State: Wake, Harnett, Lee, and Moore Counties.⁴ In Wake County, National holds under 2 percent of the total \$16.7 million in personal installment loan outstandings generated by the 22 small loan companies operating therein. An analysis of Bank's operations indicates that it is an insignificant competitor for such loans in Wake County. In Harnett County, the aggregate total outstandings for five small loan companies is \$2.3 million; National's two offices have approximately 11 percent thereof. Bank's branch in Harnett County was recently opened and, as of June 30, 1972, did not have any loans in the area. From the facts of record, it appears that no significant direct competition exists between National and Bank in the personal installment loan market in Wake and Harnett Counties and that approval herein would have no significant adverse effects on competition in these two areas.

By comparison, in the Lee County market, there are three commercial banks and five small loan companies with aggregate personal installment loan outstandings of \$5.2 million. Bank has loans of approximately \$1 million, representing 19.4 percent, and National has loans of almost \$300,000, representing 5.7 percent, of the total Lee County personal installment loans outstanding. In Moore County there are six banks and three small loan companies which together have \$3.3 million of personal installment loans outstanding. Bank has loans of approximately \$900,000, representing 27.4 percent, and National has loans of approximately \$500,000, or 14.7 percent, of all personal installment loans outstanding in this market area. From the facts of record, it appears that significant competition exists between Applicant and National in making personal installment loans in Lee and Moore Counties. Approval of Applicant's acquisition of National would eliminate this existing competition, remove an alternative source of consumer credit,

⁴ The Board has previously determined that consumer finance companies generally compete with commercial banks in the area of small loans to individuals (see Board Order of August 3, 1973, denying acquisition of Public Loan Company by Bankers Trust New York, 59 Federal Reserve Bulletin 694). Accordingly, in a given situation, the acquisition of a consumer finance company by a commercial banking organization may result in the elimination of existing competition in those geographic markets in which both compete. In its analysis of this application, the Board has considered Applicant's contention that inasmuch as Companies primarily make small loans at high interest rates to high-risk customers, they should not be regarded as competing with Bank. However, after evaluating such factors as the average rates charged on loans, the loan loss experiences, and the average loan sizes of Applicant and Companies, the Board has determined that each represents a competitive alternative for persons seeking a personal installment loan in those geographic markets in which they compete.

and increase Applicant's share of personal installment loans made in the Lee County area from approximately 19 to 25 percent, and in the Moore County area from approximately 27 to 42 percent. Accordingly, the Board concludes that the proposed acquisition of National would have significant adverse effects on existing competition.

Section 4(c)(8) of the Bank Holding Company Act requires the Board to find that performance by National as an affiliate of Applicant "can reasonably be expected to produce benefits to the public such as greater convenience, increased competition, or gains in efficiency that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests or unsound banking practices." Applicant has the burden of demonstrating that the proposed acquisition will be in the public interest. In seeking to meet this burden Applicant indicates that affiliation would give National greater flexibility in acquiring funds to lend to its customers and would permit National to expand its current services. Applicant's claims of public benefits to be derived from consummation of the proposal lacks support either in the form of objective evidence or in the form of firm policy commitments. Accordingly, upon consideration of the aforementioned anti-competitive factors in connection with the National acquisition, the Board finds that the public benefits to be derived from this affiliation do not outweigh the adverse competitive effects of the proposal.

On the other hand, the Board does not regard Applicant's application to acquire Friendly in a similar light. Bank and Friendly do not make personal installment loans in the same geographic market⁶ and it appears therefore that approval would not eliminate any significant existing competition between them. In addition, Friendly acts as agent for the sale of credit life and credit accident and health insurance in connection with personal installment loans made by it. Considering the size and scope of Friendly's business, it does not appear that Applicant's acquisition of Friendly would have a significantly adverse effect on competition in this product line. The Board concludes that competitive considerations are consistent with approval of the Friendly application. In addition, as indicated above, affiliation with Applicant would increase the financial resources available to Friendly, thereby enabling it to become a more active competitor in the area which it serves. There is no evidence in the record to indicate that the acquisition of Friendly would result in any undue concentration of resources, unfair competition, conflicts of interests, or unsound banking practices.

Based on the foregoing and other considerations reflected in the record, the

⁶ Friendly operates only in Richmond County; Bank, as previously indicated, operates in Wake, Harnett, Lee, Moore, and Chatham Counties.

Board has determined, with respect to the application to acquire National, that the public benefits which the Board is required to consider under section 4(c)(8) of the Act do not outweigh the adverse competitive effects of that proposal. Accordingly, the application to acquire National is hereby denied.

Based on the foregoing and other considerations reflected in the record, the Board has determined, with respect to the application to acquire Friendly, that the balance of the public interest factors the Board is required to consider under section 4(c)(8) is favorable. Accordingly, the application to acquire Friendly is hereby approved. This determination is subject to the conditions set forth in § 225.4(c) of Regulation Y and to the Board's authority to require such modification or termination of the activities of a holding company or any of its subsidiaries as the Board finds necessary to assure compliance with the provisions and purposes of the Act and the Board's regulations and orders issued thereunder, or to prevent evasion thereof.

The transaction to acquire Friendly shall be made not later than three months after the effective date of this order, unless such period is extended for good cause by the Board or by the Federal Reserve Bank of Richmond.

By order of the Board of Governors,⁶ effective April 11, 1974.

[SEAL] CHESTER B. FELDBERG,
Secretary of the Board.

[FR Doc.74-9092 Filed 4-19-74; 8:45 am]

WM. F. CHRISTEL, INC.

Acquisition of Bank

Wm. F. Christel, Inc., Valders, Wisconsin, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 660 additional voting shares of Valders State Bank, Valders, Wisconsin, in order to retain control of 35 percent of the voting shares of Valders State Bank. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the office of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the

⁶ Denial of acquisition of National Finance Company, Inc., Rockingham, North Carolina. Voting for this action: Vice Chairman Mitchell and Governors Brimmer, Bucher, Holland and Wallich. Voting against this action: Governor Sheehan. Absent and not voting: Chairman Burns.

Approval of acquisition of The Friendly Loan Company, Inc., Rockingham, North Carolina. Voting for this Action: Vice Chairman Mitchell and Governors Brimmer, Sheehan, Bucher, Holland, and Wallich. Absent and not voting: Chairman Burns.

Statement of Governor Sheehan Concurring in Part and Dissenting in Part filed as part of the original document. Copies available upon request to Board of Governors of the Federal Reserve System, Washington, D.C. 20551 or to the Federal Reserve Bank of Richmond.

application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than May 6, 1974.

Board of Governors of the Federal Reserve System, April 12, 1974.

[SEAL] THEODORE E. ALLISON,
Assistant Secretary of the Board.

[FR Doc.74-9086 Filed 4-19-74; 8:45 am]

FIRST BANCSHARES OF FLORIDA, INC.

Order Approving Acquisition of Bank

First Bancshares of Florida, Inc., Boca Raton, Florida, a bank holding company within the meaning of the Bank Holding Company Act, has applied for the Board's approval under section 3(a)(3) of the Act (12 U.S.C. 1842(a)(3)) to acquire 90 percent of the voting shares of The First State Bank of Arcadia, Arcadia, Florida ("Bank").

Notice of the application, affording opportunity for interested persons to submit comments and views, has been given in accordance with section 3(b) of the Act. The time for filing comments and views has expired and the Board has considered the application and all comments received in light of the factors set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Applicant, the thirteenth largest commercial banking organization in Florida, controls 13 banks with aggregate deposits of \$445 million, representing 2.2 percent of the total deposits in commercial banks in the State.¹ The acquisition of Bank, a recently formed bank, would not significantly increase Applicant's share of total commercial bank deposits in Florida.

Bank is the smaller of only two banks in De Soto County, the relevant banking market. Applicant has no subsidiary operating in the De Soto County market or any banking market adjacent thereto. No meaningful competition exists between Bank and any of Applicant's present subsidiaries nor does it appear likely that such competition will develop in the future, in view of the fact that Applicant's banking subsidiary nearest to Bank is located in Jensen Beach, over 125 miles away from De Soto County. The Board concludes that consummation of the proposed transaction would not have an adverse effect on existing or potential competition in any relevant area.

Considerations relating to the financial and managerial resources and future prospects of Applicant, Applicant's subsidiary banks, and Bank are generally satisfactory, particularly in view of Applicant's commitment to inject \$1.4 million of equity capital into certain of its subsidiary banks. Bank, a recently formed bank, has no financial or operational history; however, its prospects as a subsidiary of Applicant appear favorable. Considerations relating to the bank-

¹ All banking data are as of June 30, 1973, and reflect bank holding company formations and acquisitions approved through January 31, 1974.

ing factors are consistent with approval of the application.

Although there is no evidence in the record to indicate that the major banking needs of the community to be served are not presently being met, Applicant proposes to engage in loan participations, provide portfolio advice, and assist in real estate and mortgage financing through one of its nonbanking subsidiaries. Therefore, considerations relating to the convenience and needs of the community to be served lend some weight toward approval of the application. It is the Board's judgment that the proposed acquisition would be in the public interest and that the application should be approved.

On the basis of the record, the application is approved for the reasons summarized above. The transaction shall not be made (a) before the thirtieth calendar day following the effective date of this order or (b) later than three months after the effective date of this order, unless such period is extended for good cause by the Board or by the Federal Reserve Bank of Atlanta pursuant to delegated authority.

By order of the Board of Governors,² effective April 11, 1974.

[SEAL] CHESTER B. FELDBERG,
Secretary of the Board.

[FR Doc.74-9095 Filed 4-19-74; 8:45 am]

FIRST NATIONAL CITY CORP.

Proposed Acquisition of West Coast Credit Corporation

First National City Corporation, New York, New York, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y, for permission to acquire voting shares of West Coast Credit Corporation, Seattle, Washington. Notice of the application was published on December 18, 1973, in *The Seattle Times*, *The Wenatchee World*, *The Tri-City Herald*, *The Yakima Herald-Republic* and *The Spokesman Review/Chronicle*, newspapers circulated in the counties of King, Chelan, Benton, Yakima, and Spokane, all within the state of Washington.

Applicant states that the proposed subsidiary would engage in the activities of making consumer installment personal loans, purchasing consumer installment sales finance contracts, and acting as broker for the sale of consumer credit life and credit accident and health insurance and consumer credit property and casualty insurance, related to the extensions of credit by the Applicant. Applicant believes that such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in

² Voting for this action: Chairman Burns and Governors Brimmer, Sheehan, Holland, and Wallich. Absent and not voting: Governors Mitchell and Bucher.

accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question should be accompanied by a statement summarizing the evidence the person requesting the hearing proposes to submit or to elicit at the hearing and a statement of the reasons why this matter should not be resolved without a hearing.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of New York.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than May 13, 1974.

Board of Governors of the Federal Reserve System, April 15, 1974.

THEODORE E. ALLISON,
Assistant Secretary of the Board.

[FR Doc.74-9093 Filed 4-19-74; 8:45 am]

FORT WORTH NATIONAL CORPORATION AND SHAWMUT ASSOCIATION, INC.

Order Approving Acquisition of American Cattle and Crop Services Corp.

The Fort Worth National Corporation, Fort Worth, Texas ("Fort Worth"), and Shawmut Association, Inc., Boston, Massachusetts ("Shawmut"), bank holding companies within the meaning of the Bank Holding Company Act, have applied for the Board's approval, under section 4(c)(8) of the Act and § 225.4(b) of the Board's Regulation Y, to form a joint venture by acquiring voting shares of American Cattle and Crop Services Corp., Guymon, Oklahoma ("American Cattle"), a de novo corporation. American Cattle will engage de novo in the activities of agricultural commodity financing and servicing or acquiring, for its own account or for the account of others, loans and other extensions of credit to agricultural enterprises or secured by agricultural commodities. Such activities have been determined by the Board to be closely related to banking (12 CFR 225.4(a)(1) and (3)).

Notice of the applications, affording opportunity for interested persons to submit comments and views on the public interest factors, has been duly published (38 FR 32176). The time for filing comments and views has expired and the Board has considered all comments received (including those of Amarillo National Bank, Amarillo, Texas, and The First National Bank, Amarillo, Texas (hereinafter called "Protestants")), in

the light of the public interest factors set forth in section 4(c)(8) of the Act (12 U.S.C. 1843(c)).

Fort Worth controls 10 banks with aggregate deposits of about \$1 billion, representing 3.1 percent of total deposits in commercial banks in Texas, and is the sixth largest multibank holding company in the State of Texas.¹ Through its nonbanking subsidiaries, Fort Worth is engaged in mortgage banking, land development,² and acting as agent for the sale of fire and casualty insurance.³

Shawmut, the second largest banking organization in the State of Massachusetts, controls 10 banks with aggregate deposits of \$1.6 billion, representing 12.7 percent of total commercial bank deposits in Massachusetts. Shawmut is engaged in factoring through a joint venture with Milberg Factors, Inc., New York, New York, and is engaged in commercial financing and securities clearance through direct subsidiaries.

Through American Cattle, Fort Worth and Shawmut propose to engage principally in originating and servicing agricultural commodity loans, including cattle feedlot financing in a six-state service area including Texas, Oklahoma, Kansas, Nebraska, Colorado, and New Mexico. The servicing of such financing will consist of "packaging" loans to cattle feedlot operations, and more generally the commodity industry, then placing these loans with prearranged banks (including subsidiary banks of Fort Worth and Shawmut). American Cattle will also provide supervision and inspection of the collateral for these loans.

American Cattle will have its main office in Guymon, Oklahoma, and a loan production office in Amarillo, Texas. While American Cattle intends to operate primarily in a servicing capacity, it may occasionally become involved in direct commodity financing for its own account for purposes of bridge financing. To the extent that American Cattle does direct commodity financing for its own account, it will be engaged in an activity also engaged in by certain of the banking subsidiaries of both Fort Worth and Shawmut. However, neither Fort Worth

¹ Banking data are as of June 30, 1973, adjusted to reflect bank holding company formations and acquisitions approved by the Board through April 1, 1974.

² Fort Worth, in connection with the Board's approval on March 30, 1973 of the application to acquire Exchange Bank & Trust Company, Dallas, Texas, committed itself to terminate by March 30, 1975, its land development activities. (See 38 FR 8694, April 5, 1973.)

³ Ownership of shares in the insurance agency corporation falls within ten-year authority of section 4(a)(2) of the Act since Applicant owned such shares when it became a bank holding company by virtue of the 1970 Amendments. Applicant has until December 31, 1980 either to dispose of these shares or terminate the impermissible part of the insurance agency's operations and file an application under section 4(c)(8) of the Act for permission to retain such shares.

nor Shawmut are engaged in the primary function to be performed by the joint venture, that is, the originating, placing and servicing of loans to the feedlot and other agricultural industries. Since American Cattle is a de novo subsidiary, no existing competition would be eliminated.

The extent to which the proposed joint venture would eliminate potential competition depends on the likelihood of either Fort Worth or Shawmut entering the market. This likelihood appears remote because the joint venture is based upon the combining of the mutually exclusive expertise possessed by each parent bank holding company. Shawmut has extensive money market expertise, especially in the area of bankers acceptance financing, and will therefore lend such expertise to the supervision of the financing portion of the joint venture. In addition, Shawmut is located close to the financial center of the country, thus enabling it to assist in placing loans in the Northeast. Fort Worth, located near feedlots and agricultural areas, has engaged in cattle financing throughout its existence and will contribute its knowledge of the technical aspects of financing the feedlot industry. A successful venture in this activity will require both large amounts of financing and considerable technical knowledge of the cattle industry. Neither co-venturer has both of these requirements, so the likelihood that either would engage in this activity alone appears limited. The Board concludes that the proposed joint venture would not adversely affect potential competition.

Protestants to these applications contend that they should be denied because no benefits will result to the public since there can be no demonstrated need for this de novo corporation. Protestants contend that the agricultural credit needs of the area involved are now being adequately met by banks and other financial institutions through normal correspondent banking relationships.

In the circumstances of this proposal, the Board finds that the proposed joint venture would result in significant public benefits. The financing needs of the agricultural commodity business, particularly the cattle feedlot business in the Southwestern United States, has created an increased demand for additional sources of capital. The local financing institutions are apparently having some difficulty meeting the expanded credit demands and are participating in loans with large correspondents in other sectors of the country. American Cattle would serve as an additional and innovative competitive source for such agricultural loans in the relevant area. The banks participating in the loans to feedlots would use bankers acceptances as their instrument for financing. Thus, the availability of such agricultural financing may not be subject to the same degree of cyclical fluctuation that has occurred in the past. Furthermore, the joint venture will serve to funnel credit from a national market to the six-state service area, thereby in-

creasing the volume of financing available in the relevant area. On this basis, the Board concludes that the proposed joint venture is likely to result in greater convenience and efficiency in the financing of commodities and feedlots, all of which should inure to the benefit of the public.

There is no evidence in the record indicating that consummation of the present proposal by two primarily regional oriented bank holding companies to engage in a joint venture would result in undue concentration of resources, unfair competition, conflicts of interest, unsound banking practices, or other adverse effects. However, although not of concern in this case, the Board cautions that it will examine carefully applications involving joint ventures between bank holding companies, particularly those which compete on a national scale, in order to determine whether there will result either a lessening of competition in other product markets in which the two compete or an undue concentration of resources.

Based upon the foregoing and other considerations reflected in the record, the Board has determined that the balance of the public interest factors the Board is required to consider under section 4(c)(8) is favorable. Accordingly, the applications are hereby approved. This determination is subject to the conditions set forth in § 225.4(c) of Regulation Y and to the Board's authority to require such modification or termination of the activities of a holding company or any of its subsidiaries as the Board finds necessary to assure compliance with the provisions and purposes of the Act and the Board's regulations and orders issued thereunder, or to prevent evasion thereof.

The transaction shall be made not later than three months after the effective date of this Order, unless such period is extended for good cause by the Board or by the Federal Reserve Banks of Boston or Dallas.

By order of the Board of Governors,⁵
effective April 15, 1974.

[SEAL] CHESTER B. FELDBERG,
Secretary of the Board.

[FR Doc.74-9094 Filed 4-19-74; P:45 am]

GREATER JERSEY BANCORP

Acquisition of Bank

Greater Jersey Bancorp., Clifton, New Jersey, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire all of the voting shares (less directors' qualifying shares)

⁴Voting for this action: Vice Chairman Mitchell and Governors Sheehan, Holland, and Wallich. Voting against this action: Governors Brimmer and Bucher. Absent and not voting: Chairman Burns.

⁵Dissenting Statement of Governors Brimmer and Bucher filed as part of the original document. Copies available upon request to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551, or to the Federal Reserve Banks of Boston or Dallas.

of the successor by merger to Plaza National Bank, Secaucus, New Jersey. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the office of the Board of Governors or at the Federal Reserve Bank of New York. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than May 10, 1974.

Board of Governors of the Federal Reserve System, April 12, 1974.

THEODORE E. ALLISON,
Assistant Secretary of the Board.

[FR Doc.74-9087 Filed 4-19-74; 8:45 am]

GRETNA CAPITAL CO.

Formation of Bank Holding Company

Gretna Capital Co., Gretna, Nebraska, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company through acquisition of 100 percent of the voting shares of Gretna State Bank, Gretna, Nebraska. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the office of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than May 6, 1974.

Board of Governors of the Federal Reserve System, April 10, 1974.

[SEAL] THEODORE E. ALLISON,
Assistant Secretary of the Board.

[FR Doc.74-9096 Filed 4-19-74; 8:45 am]

LA PORTE CORP.

Formation of Bank Holding Company

The La Porte Corporation, Chicago, Illinois, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company through acquisition of 74 per cent or more of the voting shares of La Porte Bank and Trust Co., La Porte, Indiana. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the office of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than May 7, 1974.

Board of Governors of the Federal Reserve System, April 12, 1974.

THEODORE E. ALLISON,
Assistant Secretary of the Board.

[FR Doc.74-9089 Filed 4-19-74; 8:45 am]

TENNESSEE VALLEY BANCORP, INC.**Acquisition of Bank**

Tennessee Valley Bancorp, Inc., Nashville, Tennessee, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to convert nonvoting preferred shares to 50 percent or more of the voting shares of Mountain Empire Bank, Johnson City, Tennessee, a proposed new bank. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the office of the Board of Governors or at the Federal Reserve Bank of Atlanta. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than May 10, 1974.

Board of Governors of the Federal Reserve System, April 12, 1974.

[SEAL] THEODORE E. ALLISON,
Assistant Secretary of the Board.

[FR Doc.74-9088 Filed 4-19-74;8:45 am]

THIRD NATIONAL CORP.**Acquisition of Bank**

Third National Corporation, Nashville, Tennessee, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 50 percent or more of the voting shares of Citizens Bank, Savannah, Tennessee. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the office of the Board of Governors or at the Federal Reserve Bank of Atlanta. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than May 10, 1974.

Board of Governors of the Federal Reserve System, April 12, 1974.

[SEAL] THEODORE E. ALLISON,
Assistant Secretary of the Board.

[FR Doc.74-9091 Filed 4-19-74;8:45 am]

UNITED MISSOURI BANCSHARES, INC.**Acquisition of Bank**

United Missouri Bancshares, Inc., Kansas City, Missouri, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 80 percent or more of the voting shares of First City Bank of Springfield, Springfield, Missouri. The factors that are considered in action on the appli-

cation are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the office of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than May 6, 1974.

Board of Governors of the Federal Reserve System, April 11, 1974.

[SEAL] THEODORE E. ALLISON,
Assistant Secretary of the Board.

[FR Doc.74-9090 Filed 4-19-74;8:45 am]

NATIONAL ENDOWMENT FOR THE HUMANITIES**FELLOWSHIPS PANEL****Notice of Meeting**

APRIL 12, 1974.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463) notice is hereby given that a meeting of the Fellowships Panel will meet at Washington, D.C., on May 4, 1974.

The purpose of the meeting is to review applications submitted to the National Endowment for the Humanities for individual fellowship grants.

Because the proposed meeting will consider financial information and personnel and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated August 13, 1973, I have determined that the meeting would fall within exemptions (4) and (6) of 5 U.S.C. 552(b) and that it is essential to close the meeting to protect the free exchange of internal views and to avoid interferences with operation of the Committee.

It is suggested that those desiring more specific information contact the Advisory Committee Management Officer, Mr. John W. Jordan, 806 15th Street, NW, Washington, D.C. 20506, or call 202-382-2031.

JOHN W. JORDAN,
Advisory Committee
Management Officer.

[FR Doc.74-9124 Filed 4-19-74;8:45 am]

FELLOWSHIPS PANEL**Notice of Meeting**

APRIL 12, 1974.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463) notice is hereby given that a meeting of the Fellowships Panel will meet at Washington, D.C., on May 3, 1974.

The purpose of the meeting is to review applications submitted to the National

Endowment for the Humanities for individual fellowship grants.

Because the proposed meeting will consider financial information and personnel and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated August 13, 1973, I have determined that the meeting would fall within exemptions (4) and (6) of 5 U.S.C. 522(b) and that it is essential to close the meeting to protect the free exchange of internal views and to avoid interferences with operation of the Committee.

It is suggested that those desiring more specific information contact the Advisory Committee Management Officer, Mr. John W. Jordan, 806 15th Street, NW, Washington, D.C. 20506, or call 202-382-2031.

JOHN W. JORDAN,
Advisory Committee
Management Officer.

[FR Doc.74-9125 Filed 4-19-74;8:45 am]

PLANNING OFFICE PANEL**Notice of Meeting**

APRIL 15, 1974.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that a meeting of the Planning Office Panel will meet at Washington, D.C. on April 29 and 30, 1974 at 806 15th Street, NW, Suite No. 3.

The first day's agenda consists of presentations of prepared findings by four grant recipients of the Office of Planning's Youthgrants in the Humanities program, followed by general discussion. The second day's agenda will consist of day-long discussions of performance of individual grant recipients, including financial and personnel aspects of their projects.

The purpose of this committee meeting is to advise on and review the progress made and problems encountered by grant recipients. The current priorities and administrative procedures of the Youthgrants program will also be examined, in light of its two years of operation.

Because the proposed second day of the meeting, to be held on April 30, 1974, will consider financial information and personnel and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated August 13, 1973, I have determined that the meeting would fall within exemptions (4) and (6) of 5 U.S.C. 552(b). It is essential to close the meeting to protect the free exchange of internal views and to avoid interference with operation of the Panel.

It is suggested that those desiring specific information contact the Advisory

Committee Management Officer, Mr. John W. Jordan, 806 15th St. NW, Washington, D.C. 20506, or call area code 202-382-2031.

JOHN W. JORDAN,
Advisory Committee
Management Officer.

[FR Doc.74-9126 Filed 4-19-74; 8:45 a.m.]

**NATIONAL SCIENCE FOUNDATION
ADVISORY COMMITTEE FOR PLANNING
AND INSTITUTIONAL AFFAIRS**

Notice of Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given of a meeting of the Advisory Committee for Planning and Institutional Affairs to be convened at 9 a.m. on May 3, 1974, in Room 545 at 1800 G Street NW., Washington, D.C. 20550.

The purpose of this Committee is to provide advice and recommendations concerning planning, evaluation and policy activities (with the exception of NSF internal long-range program estimates); and the impact of actual and proposed Foundation programs on the effectiveness and integrity of academic and other institutions performing research, viewed as a whole.

The agenda for the meeting shall include:

MORNING

- 9:00—Opening Remarks, Committee Chairman; Assistant Director for Administration.
- 9:30—Problems in Science Education, Assistant Director for Education.
- 10:30—Coffee break.
- 10:45—Discussion of The Second Newman Report: National Policy and Higher Education, Committee Chairman and members; Deputy Director, NSF.
- 12:00—Recess for lunch.

AFTERNOON

- 1:00—Work on Study Topics, Committee Chairman and members.
- 5:00—Public Discussion (if necessary).
- 5:30—Discussion of annual report and adjournment.

This meeting shall be open to the public. Individuals who wish to attend should notify Mrs. Mary L. Parramore, Executive Assistant, Office of Budget, Programming, and Planning Analysis, by telephone (202-632-4050) or by mail (Room 426, 1800 G Street, NW., Washington, D.C. 20550) prior to the meeting.

Persons requiring further information concerning this Committee should contact Mrs. Mary L. Parramore at the above address. Summary minutes relative to this meeting may be obtained from the Management Analysis Office, Room K-720, 1800 G Street, NW., Washington, D.C. 20550.

ELDON D. TAYLOR,
Acting Assistant Director
for Administration.

APRIL 12, 1974.

[FR Doc.74-9142 Filed 4-19-74; 8:45 am]

**OFFICE OF MANAGEMENT AND
BUDGET**

CLEARANCE OF REPORTS

List of Requests

The following is a list of requests for clearance of reports intended for use in collecting information from the public received by the Office of Management and Budget on April 17, 1974 (44 USC 3509). The purpose of publishing this list in the FEDERAL REGISTER is to inform the public.

The list includes the title of each request received; the name of the agency sponsoring the proposed collection of information; the agency form number, if applicable; the frequency with which the information is proposed to be collected; the name of the reviewer or reviewing division within OMB, and an indication of who will be the respondents to the proposed collection.

The symbol (x) identifies proposals which appear to raise no significant issues, and are to be approved after brief notice through this release.

Further information about the items on this Daily List may be obtained from the Clearance Office, Office of Management and Budget, Washington, D.C. 20503 (202-395-4529).

NEW FORMS

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service, Regulations Determining Eligibility for Free and Reduced Price Meals and Free Milk in Child-Care Institutions, Form _____, Occasional, Lowry, Child care institutions.

**DEPARTMENT OF HEALTH, EDUCATION, AND
WELFARE**

Health Resources Administration, Placement of Public Health Statistics Graduates, Form HRANCHS 0412, Occasional, Wann/Lowry/Weiner, State & local health dept., schools of public health.

VETERANS ADMINISTRATION

Request for Information to Update Lender Participation, Form FL 26-613, Single time, Lowry, Lenders.
None.

REVISIONS

EXTENSIONS

DEPARTMENT OF AGRICULTURE

Farmers Home Administration, Appraisal Report—Farm Tract, Form FMHA 422-1, Occasional, Evinger (x), Farms.
Rural Electrification Administration, requests for Power Supply Surveys—REA Borrowers Form REA 111-3, Occasional, Evinger (x), REA electric borrowers.

DEPARTMENT OF LABOR

Bureau of Labor Statistics, report on Occupational Employment, Form BLS MA 2877, Single time, Raynsford/Peterson, Manufacturing establishments.

VETERANS ADMINISTRATION

Application for Designation as Fee Appraiser for Non-Real, Estate Loans and Supplemental Loans, Form 26-6682, Occasional, Evinger (x), Fee appraisers.

PHILLIP D. LARSEN,

Budget and Management Officer.

[FR Doc.74-9235 Filed 4-19-74; 8:45 am]

**POSTAL RATE COMMISSION
BOSTON, MASS., POSTAL FACILITIES
Notice of Postal Employees' Visit**

APRIL 17, 1974.

Notice is hereby given that employees of the Postal Rate Commission will be visiting Postal Service facilities on the date indicated for the purpose of acquiring general background knowledge of postal operations.

No particular matter at issue in contested proceedings before the Commission or the substantive merits of a matter that is likely to become a particular matter at issue in contested proceedings before the Commission will be discussed.

A report of the visit will be on file in the Commission's docket room.

Place of visit Date of visit
Boston, Mass. May 7, 1974

By direction of the Commission.

JOSEPH A. FISHER,
Secretary.

[FR Doc.74-9147 Filed 4-19-74; 8:45 am]

**SECURITIES AND EXCHANGE
COMMISSION**

[70-5488]

ALABAMA POWER CO. ET AL.

**Issuance of First Mortgage Bonds for
Sinking Fund Purposes**

APRIL 16, 1974.

In the matter of Alabama Power Company, P.O. Box 2641, Birmingham, Alabama 35291; Gulf Power Company, P.O. Box 1151, Pensacola, Florida 32520; Georgia Power Company, P.O. Box 4545, Atlanta, Georgia 30302; and Mississippi Power Company, P.O. Box 4079, Gulfport, Mississippi 39501; (70-5488).

Notice is hereby given that Alabama Power Company ("APCO"), Gulf Power Company ("Gulf"), Georgia Power Company ("GPCO"), and Mississippi Power Company ("Mississippi"), all of which are public utility subsidiaries of The Southern Company, a registered holding company, have filed a joint declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating sections 6(a) and 7 of the Act and Rule 50(a)(5) promulgated thereunder as applicable to the following proposed transaction. All interested parties are referred to the declaration, which is summarized below, for a complete statement of the proposed transaction.

APCO, GPCO, Gulf, and Mississippi propose to issue and deliver, on or prior to June 1, 1974, \$26,592,000 principal amount of their respective First Mortgage Bonds ("Sinking Fund Bonds") and to surrender such Sinking Fund Bonds to the trustees under their respective Indentures for the purpose of satisfying the sinking fund (improvement fund, in the case of APCO) requirements thereunder. The amounts and series of Sinking Fund Bonds proposed to be issued are as follows:

[Dollars in thousands]

Name of company	Amount	Series
APCO	\$9,730	3 1/4 percent series due 1985.
GPCO	13,475	2 3/4 percent series due 1980.
Gulf	1,749	3 3/4 percent series due 1984.
Mississippi	1,638	2 3/4 percent series due 1980.

The Sinking Fund Bonds are to be issued on the basis of unfunded net property additions, thus making available for construction purposes cash which would otherwise be needed to satisfy the sinking fund requirements or to purchase bonds to be used for such purpose. It is stated that the delivery of the Sinking Fund Bonds is exempt from the competitive bidding requirements of Rule 50 by reason of clause (a) (5) thereof inasmuch as they will not constitute obligations of the companies for the payment of money.

The fees, commissions and expenses incurred or to be incurred in connection with the proposed transaction will aggregate \$4,850, of which total fees for legal counsel will be \$1,200. The Alabama Public Service Commission, the Georgia Public Service Commission, and the Florida Public Service Commission have jurisdiction over the issuance of the Sinking Fund Bonds by APCO, GPCO, and Gulf, respectively. No other State commission, and no Federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Notice is further given that any interested person may, not later than May 10, 1974, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail (air mail if the person being served is located more than 500 miles from the point of mailing) upon the declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as filed or as it may be amended, may be permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from its rules under the Act as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

[SEAL] GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.74-9165 Filed 4-19-74;8:45 am]

CHICAGO BOARD OPTIONS EXCHANGE, INC.

Delaying Effectiveness of Proposed Amendments to Option Plan

Notice is hereby given that the Chicago Board Options Exchange, Inc., (CBOE) has filed an amendment to certain of its proposed changes to its Option Plan filed pursuant to Rule 9b-1 (17 CFR 240.9b-1) delaying their effectiveness. CBOE's amendment delays the effectiveness of these proposed amendments until the Commission may allow their effectiveness or shall disapprove the change in whole or in part as being inconsistent with the public interest or the protection of investors.

One of these amendments was noticed on March 14, 1974 at 39 FR 9879 and would restrict opening transactions (subject to specified exceptions) in certain CBOE options series in which the market price of the underlying stock is substantially below the exercise price during the last two calendar months of the term of the option series.

The other amendments were noticed on March 13, 1974 at 39 FR 10671. The major impact of these amendments is on CBOE's Rules 8.3, 8.6 and 8.7. CBOE proposes the elimination of multimember market-maker units, meaning that all market-maker appointments would be made to individuals. Two types of market-maker appointments would be created, principal and supplemental. A full-time market-maker would ordinarily have both principal and supplemental appointments, and would be required to have at least 50 percent of his transactions in his principal appointment classes of option contracts. Those persons unable to undertake full-time market-maker responsibilities would be awarded only supplemental appointments. All market-makers would be required to have at least 75 percent of their transactions in their appointed classes; the remaining transactions would continue to be subject to the market-making obligations established by sections (a) and (d) of Rule 8.7. Technical changes have also been proposed for CBOE's Rules 6.51, 6.53, 6.73, 7.5, 7.7, 7.8 and 8.8 or the Interpretations and Policies thereunder.

All interested persons are invited to submit their views and comments on the proposed amendments to CBOE's plan either before or after it has become effective. Written statements of views and comments should be addressed to the Secretary, Securities and Exchange

Commission, 500 North Capitol Street, NW., Washington, D.C. 20549. Reference should be made to file number 132-37784. The proposed amendments (including the reasons for such amendments) are, and all such comments will be available for public inspection at the Public Reference Room of the Securities and Exchange Commission at 1100 L Street, NW., Washington, D.C.

[SEAL] GEORGE A. FITZSIMMONS,
Secretary.

APRIL 16, 1974.

[FR Doc.74-9166 Filed 4-19-74;8:45 am]

[70-5489]

MISSISSIPPI POWER COMPANY Construction of Pollution Control Equipment

APRIL 16, 1974.

Notice is hereby given that Mississippi Power Company ("Mississippi"), 2992 West Beach, Gulfport, Mississippi 39501, an electric utility subsidiary company of The Southern Company, a registered holding company, has filed an application-declaration, and an amendment thereto, with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating sections 6(a), 7, 9(a), and 12(d) of the Act and Rules 44 and 50 promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to said amended application-declaration, which is summarized below, for a complete statement of the proposed transactions.

Mississippi owns a five-unit electric generating plant, located in Harrison County, Mississippi, known as Plant Jack Watson. The five units were placed in commercial operation on various dates from 1957 to 1973. In order to comply with environmental control standards with respect to air and water quality, Mississippi has and will undertake to construct certain facilities ("Project") solely for this purpose. The total cost of the Project is presently estimated not to exceed \$18 million.

To finance the Project, Mississippi proposes to enter into an Installment Sale Agreement ("Agreement") with Harrison County, Mississippi ("County"), which will provide for the acquisition, construction and equipping of the Project by the County, and the issuance by the County, pursuant to an indenture ("Indenture") to be entered into between the County and an indenture trustee ("Trustee"), of its pollution control revenue bonds ("Pollution Bonds") in an amount not to exceed \$18 million. The proceeds of the sale of Pollution Bonds will be deposited by the County with the Trustee and will be applied to the payment of the cost of construction (as defined in the Agreement) of the Project.

It is further proposed, and the Agreement provides, that the Project will be sold to Mississippi, the purchase price to be paid in semi-annual installments over a period of 30 years. The purchase price shall be in an amount sufficient to pay the principal and interest on the Pollution Bonds as such amounts become due and payable. Mississippi may prepay the purchase price (a) in whole or in part, at Mississippi's option, at any time after ten years from the date of issuance of the Pollution Bonds, subject to payment of a premium equal to 3 percent of the principal amount in the eleventh year and declining thereafter by 1/2 of 1 percent, and (b) in whole, at Mississippi's option in certain other specified instances, without premium.

In order to obtain the benefit of a rating for the Pollution Bonds equivalent to the rating enjoyed by the first mortgage bonds outstanding under Mississippi's bond indenture ("Mortgage"), Mississippi proposes to issue a series of such first mortgage bonds ("Collateral Bonds") under the Mortgage, pursuant to a supplemental indenture ("Supplemental Mortgage"). The Collateral Bonds, to be issued in a principal amount (not exceeding \$18 million) equal to the principal amount of the Pollution Bonds, will be deposited with the Trustee as security for Mississippi's obligations under the Agreement. The Collateral Bonds will have a stated interest rate equal to the interest rate per annum to be borne by the Pollution Bonds, will mature on the maturity date of such Pollution Bonds, and will be non-transferable. The Supplemental Mortgage will provide, however, that until the Trustee shall have demanded mandatory redemption of the Collateral Bonds, no interest in respect of the Collateral Bonds shall accrue or become payable, but that upon acceleration of Pollution Bonds then outstanding by the Trustee, he may demand the mandatory redemption of the Collateral Bonds at a price equal to the principal amount thereof plus accrued interest, if any, to the date fixed for redemption.

The Indenture will provide that, upon deposit of funds with or direction to the Trustee by Mississippi to apply available funds, or upon delivery of outstanding Pollution Bonds sufficient to pay or redeem all or any part of the Pollution Bonds, the Trustee will be obligated to deliver to Mississippi Collateral Bonds in an aggregate principal amount equal to that amount of Pollution Bonds for the payment or redemption of which such funds have been deposited or applied or which shall have been so delivered.

It is stated that the Pollution Bonds are expected to be marketed pursuant to an arrangement between the County and a group of underwriters represented by Morgan Stanley & Co. Incorporated. In accordance with the laws of the State of Mississippi, the interest rate thereon will be fixed by the County, and the terms and sale of the Pollution Bonds must be satisfactory to Mississippi, although Mississippi will not be a party

to the underwriting arrangement. The terms of the Pollution Bonds contain sinking fund provisions, which, in the aggregate, will retire at least twenty-five percent of the original issue by its final maturity date. Mississippi further states that it is expected that the interest payable on the Pollution Bonds will be exempt, by ruling of the Internal Revenue Service, from federal income taxation. It is not possible to ascertain in advance precisely the interest rate which may be obtained in connection with the issuance of the Pollution Bonds, but Mississippi is advised that tax-exempt bonds of like quality and tenor have historically carried an annual interest rate approximately one and one-half to two and one-half percent lower than comparable taxable long-term corporate bonds.

In order to comply with provisions of Mississippi law authorizing the County to issue its revenue bonds for the purposes heretofore described, Mississippi will be obligated to convey to the County such existing pollution control facilities as are now owned by Mississippi, subject to the Mortgage. The Agreement provides that Mississippi will receive, out of the proceeds of the Pollution Bonds, an amount equal to Mississippi's original cost for such existing facilities, which, upon conveyance to the County, will become a part of the Project which Mississippi proposes to purchase as provided in the Agreement.

For financial and accounting reporting purposes, the indebtedness of Mississippi under the Collateral Bonds will be capitalized. The fees, commissions and expenses paid or incurred, or to be paid or incurred, in connection with the proposed transactions (although not in connection with obtaining the ruling of the Internal Revenue Service or the sale of the Pollution Bonds) will aggregate \$73,100, which includes counsels' fees of \$35,000 and an accountant's fee of \$10,100. It is stated that the Mississippi Public Service Commission has jurisdiction over, and has expressly authorized, the conveyance by Mississippi of the existing pollution control facilities and the acquisition of the Project from the County. Mississippi submits that the issuance and delivery of its Collateral Bonds to the County should be exempted from the competitive bidding requirements of Rule 50 by reason of clause (a) (5) thereof inasmuch as they are to be issued and delivered solely to secure Mississippi's obligation to the County and no public offering by Mississippi is to be made. No other State commission and no Federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Notice is further given that any interested person may, not later than May 10, 1974, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application-declaration, as amended, or as it may be further amended, which he desires to controvert, or he may request that he be notified if the Commission should order a

hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail (air mail if the person being served is located more than 500 miles from the point of mailing) upon the applicant-declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as amended or as it may be further amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

[SEAL] GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.74-9167 Filed 4-19-74; 8:45 am]

[70-5293]

CONSOLIDATED NATURAL GAS COMPANY AND SUBSIDIARY COMPANIES

Post-Effective Amendment Requesting Exception From Consolidated Tax Allocation Provisions

APRIL 12, 1974.

Notice is hereby given that Consolidated Natural Gas Company ("Consolidated"), a registered holding company, and its subsidiary companies have filed a post-effective amendment in this proceeding, relating to their joint declaration heretofore filed with this Commission pursuant to sections 12(b) and 12(f) of the Public Utility Holding Company Act of 1935 ("Act") and rule 45 promulgated thereunder. All interested persons are referred to said declaration as so amended for a complete statement of the proposed transactions, which are summarized below.

Consolidated and its subsidiary companies join annually in filing a consolidated federal income tax return. By Order dated February 6, 1973 in this proceeding (Holding Company Act Release No. 17875), Consolidated, pursuant to subparagraph (a) of rule 45 under the Act, was granted authorization for the years 1972 and 1973 to allocate the group's consolidated income tax liabilities in a manner differing in certain respects from that which is prescribed by subparagraph (b) (6) of rule 45. In said post-effective amendment it stated that the factors which gave rise to the authorization previously requested for the tax years 1972 and 1973 are expected to be operative for the

years 1974 and 1975; and the Commission is requested to extend that authorization so as to cover those latter years. Both the authorization of February 6, 1973 and the requested extension thereof involve the operations of two of Consolidated's exploration and development subsidiaries, CNG Development Company Ltd. ("CNG Ltd.") and CNG Producing Company ("CNG Producing").

CNG Ltd., an Alberta (Canada) corporation, and CNG Producing, a Delaware corporation, were organized in 1972 for the purpose of engaging in the exploration and development of natural gas reserves in Canada, as part of the System's overall program to augment its future gas supplies. (See Holding Company Act Release Nos. 17559 and 17813, issued May 1, 1972 and December 19, 1972, respectively.) In addition to its Canadian operations, CNG Producing has also acquired interests in domestic oil and gas acreage located in the Gulf of Mexico, for the development of additional domestic supplies. (See Holding Company Act Release No. 18085, September 6, 1973.)

The reasons for departing from the tax allocation prescription of rule 45(b)(6) were set forth in some detail in said Order of February 6, 1973. Briefly restated, these are that the exploration and development activities of CNG Ltd. and CNG Producing require substantial investments of capital; that it takes several years before newly discovered gas reserves can be developed, produced, and brought to market; that during the lengthy development period the companies incur tax losses which are included in the consolidated tax returns and result in sizable reductions in the consolidated tax liabilities; that under the tax allocation prescription of rule 45(b)(6) these tax savings would flow to other companies in the consolidated group and would thus be rendered unavailable to CNG Ltd. and CNG Producing for furtherance of their exploration and development activities; and that this would result in inequities in the allocation of the consolidated taxes.

For the respective years 1972 and 1973, it is stated that the two producing subsidiaries incurred aggregate losses for tax purposes of approximately \$4,111,000 and \$11,751,000, resulting in aggregate tax credits of approximately \$1,974,000 and \$5,640,000 to both companies in those respective years under the authorization heretofore granted. It is tentatively estimated that the exploration and development activities of CNG Ltd. and CNG Producing in 1974 and 1975 will result in further aggregate tax-deductible losses of \$11,852,000 and \$11,000,000 in those respective years, which, at present tax rates, would result in consolidated tax reductions of \$5,690,000 and \$5,280,000, respectively.

In light of the foregoing, declarants request that the authorization heretofore granted for the years 1972 and 1973, as to the method of allocating the group's consolidated federal income taxes in a manner other than prescribed

by rule 45(b)(6), be extended to cover the years 1974 and 1975. Under the requested authorization, and based on the present estimates, the two producing companies would receive cash tax credits in the amounts indicated above. The tax allocation procedure to be followed in 1974 and 1975 would be the same as heretofore authorized for the previous two years, to wit:

1. When the operations of any producing subsidiary company, direct or indirect, of Consolidated results in a tax loss, then the consolidated federal income tax to be allocated among the System companies would be based upon the tax that would result had the company incurring the loss been excluded from the consolidated federal income tax return.

2. The funds retained by virtue of the reduction in tax resulting from inclusion of that tax loss in the consolidated federal income tax return would be remitted to the company or companies sustaining such tax loss.

3. In future years, when any such producing company has taxable income, it may be entitled to tax credits as a result of the net operating loss carryback and carryover provisions of section 172(b) of the 1954 Internal Revenue Code, in order to comply with the separate return limitations required by rule 45(b)(6). Any credits remitted under paragraph 2 would be applied to reduce any credits in future years to which such company may become entitled under the separate return limitations of rule 45(b)(6).

4. Subject to paragraph 3, in no event will the tax allocated to any subsidiary company of Consolidated exceed the amount of tax of such company computed as if such company had always filed its tax returns on a separate return basis.

5. For the purposes of the consolidated income tax regulations, CNG Ltd. is regarded as a domestic corporation. Accordingly, CNG Ltd. will be treated as such for purposes of the proposed tax allocation under rule 45.

It is stated that no State commission, and no Federal commission other than this Commission, has jurisdiction over the proposed transactions. Fees and expenses to be incurred in connection with the proposed transactions are estimated not to exceed \$1,050, including \$1,000 for services rendered at cost by the System service company, Consolidated Natural Gas Service Company, Inc.

Notice is further given that any interested person may, not later than May 10, 1974, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said declaration, as amended, which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail (air mail if

the person being served is located more than 500 miles from the point of mailing) upon the declarants at the above-stated address, and proof of service (by affidavit or, in case of any attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as amended by said post-effective amendment or as it may be further amended, may be permitted to become effective as provided in rule 23 of the general rules and regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in rule 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

[SEAL] GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.74-9135 Filed 4-19-74; 8:45 am]

[811-1508]

GIBRALTAR GROWTH FUND, INC.

Notice of Filing of Application

APRIL 15, 1974.

Notice is hereby given that Gibraltar Growth Fund, Inc. ("Applicant"), a diversified, open-end management investment company registered under the Investment Company Act of 1940 ("Act"), has filed an application pursuant to section 8(f) of the Act for an order of the Commission declaring that Applicant has ceased to be an investment company as defined in the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant was organized as a Delaware corporation on March 6, 1967 and registered under the Act on December 29, 1967, by filing a notification of registration on Form N-8A.

The application states that a special meeting of shareholders held on August 3, 1972, a resolution was adopted approving an agreement and plan of reorganization ("Plan"), which provided for the liquidation and dissolution of Applicant through the sale of substantially all of Applicant's property and assets in exchange for the shares of Dreyfus Leverage Fund, Inc. ("Dreyfus"), also an investment company registered under the Act. Such exchange was consummated on August 7, 1972.

The distribution pursuant to the Plan is to take place in two steps, the first step of which was the distribution to Applicant's shareholders of 94.5 percent of the Dreyfus shares received following the exchange. The remaining 5.5 percent of the Dreyfus shares and all other assets of Applicant were transferred on November 3, 1972, to a trust established for

the purpose of paying certain expenses and liabilities of Applicant with the balance to be distributed to Applicant's shareholders approximately six years from the date of the exchange. Applicant's Certificate of Dissolution was submitted to the Secretary of the State of Delaware on November 3, 1972.

Section 8(f) of the Act provides, in pertinent part, that when the Commission, upon application, finds that a registered investment company has ceased to be an investment company, it shall so declare by order and upon the effectiveness of such order the registration of such order the registration of such company shall cease to be in effect.

Notice is further given that any interested person may, not later than May 10, 1974 at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission should order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail (air mail if the person being served is located more than 500 miles from the point of mailing) upon the Applicant at the address stated above. Proof of such service (by affidavit, or in case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by rule 0-5 of the rules and regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing or advice as to whether a hearing is ordered will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management Regulation, pursuant to delegated authority.

[SEAL] GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.74-9137 Filed 4-19-74;8:45 am]

[File No. 500-1]

NATIONAL ALFALFA DEHYDRATING AND MILLING CO.

Notice of Suspension of Trading

APRIL 15, 1974.

The common stock of National Alfalfa Dehydrating and Milling Company being traded on the American Stock Exchange pursuant to provisions of the Securities Exchange Act of 1934 and all other securities of National Alfalfa Dehydrating and Milling Company being traded otherwise than on a national securities exchange; and

It appearing to the Securities and Exchange Commission that the summary suspension of trading in such securities on such exchange and otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

Therefore, pursuant to sections 19(a) (4) and 15(c) (5) of the Securities Exchange Act of 1934, trading in such securities on the above mentioned exchange and otherwise than on a national securities exchange is suspended, for the period from April 16, 1974 through April 25, 1974.

By the Commission.

[SEAL] GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.74-9138 Filed 4-19-74;8:45 am]

[70-5485]

OHIO POWER CO. AND AMERICAN ELECTRIC POWER CO., INC.

Proposed Issue and Sale by Subsidiary Company of First Mortgage Bonds

APRIL 15, 1974.

NOTICE IS HEREBY GIVEN that American Electric Power Company, Inc., 2 Broadway, New York, New York 10004 ("AEP"), a registered holding company, and its electric utility subsidiary company, Ohio Power Company "Ohio", have filed an application-declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating sections 6(b), and 12 of the Act and rule 50 promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the application-declaration, which is summarized below, for a complete statement of the proposed transactions.

Ohio proposes to issue and sell, pursuant to the competitive bidding requirements of rule 50 under the Act, \$100,000,000 aggregate principal amount of its first mortgage bonds ("bonds") in one or more new series maturing in not less than 5 and not more than 30 years. The number of new series of bonds and the maturity of the bonds will be determined not less than 72 hours prior to the bidding date. The interest rate on the bonds (which shall be a multiple of $\frac{1}{8}$ of 1 percent) and the price to be paid to Ohio (which shall not be less than 99 percent nor more than 102 $\frac{3}{4}$ percent of the principal amount thereof) will be determined by competitive bidding. The bonds will be issued under and pursuant to the Mortgage and Deed of Trust between Ohio and Manufacturers Hanover Trust Company and Donald B. Herterich, as trustees, as amended and supplemented, and as further supplemented by an Indenture Supplemental to be dated as of the first day of the month in which the bonds are issued and sold. The terms of each series of bonds will preclude Ohio from redeeming any such bonds at a regular redemption price prior to June 1, 1979, if such redemption is for the purpose of refunding such bonds through

the use of funds borrowed at an effective interest cost lower than the effective interest cost of the bonds.

AEP also proposes to make a cash capital contribution of \$20,000,000 to Ohio. This cash contribution will be combined with \$5,500,000 in capital contributions previously authorized by this Commission's orders dated November 1, 1973 (Holding Company Act Release No. 18152) and June 29, 1973 (Holding Company Act Release No. 18013) for application to the purposes herein described.

The proceeds from the sale of the bonds and from the cash capital contributions are to be applied to the repayment of unsecured short-term debt of Ohio. It is expected that at the time of the issuance and delivery of the bonds there will be notes payable to banks and commercial paper outstanding in a total estimated amount of approximately \$175,000,000.

It is stated that the Public Utilities Commission of Ohio has jurisdiction over the proposed issue and sale of the bonds and that no other state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transactions. Fees and expenses to be incurred in connection with the proposed transactions are to be supplied by amendment.

Notice is further given that any interested person may, not later than May 10, 1974, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application-declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail (air mail if the person being served is located more than 500 miles from the point of mailing) upon the applicants-declarants at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration as filed or as it may be amended, may be granted and permitted to become effective as provided in rule 23 of the general rules and regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

[SEAL] GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.74-9136 Filed 4-19-74;8:45 am]

**U.S. INFORMATION AGENCY
ENGLISH TEACHING ADVISORY PANEL**

Notice of Meeting

In accordance with Public Law 92-463, announcement is made of a public meeting of the English Teaching Advisory Panel of USIA to be held May 13-14, 1974, in Room 634, 1717 H Street, Washington, D.C. The first session will begin at 2 p.m. on Monday, May 13.

1. *Purpose.* The purpose of this panel is to advise USIA on English teaching material, pedagogy, and policy and to apprise the Agency of pertinent developments in the academic sector.

2. *Activities.* USIA brings the panel up to date on recent activities and developments and on plans for the future, requesting specific recommendations on matters within the panel's purview. Panel members report plans and activities of USIA interest in the academic sector.

3. *Agenda.* The agenda for the May 13-14 meeting will be as follows:

- a. Hear reports from panel members on recent activities.
- b. Discuss plans for a series of TV English lessons.
- c. Discuss plans for a series of VTRs for teacher training purposes.
- d. Discuss changes in the manpower situation that affect staffing of English teaching programs.
- e. Any other subjects submitted by panel members before the meeting.

4. *Public participation.* The public is invited to attend this meeting. Any member of the public wishing to file a written statement with the panel may do so before or after the meeting.

Those desiring more specific information may call the English Teaching Branch of USIA on 202-632-4867.

WALTER W. JONES,
Chief, Management Division,
Office of Administration and
Management.

[FR Doc.74-9084 Filed 4-19-74;8:45 am]

**INTERSTATE COMMERCE
COMMISSION**

[Notice 491]

ASSIGNMENT OF HEARINGS

APRIL 17, 1974.

Cases assigned for hearing, postponement, cancellation, or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested. No amendments will be entertained after the date of this publication.

MC-116004 (Sub-No. 30), Texas-Oklahoma Express, Inc., now assigned May 13, 1974, at Oklahoma City, Okla., will be held in Room 4214, Federal Office Building & Courthouse, 200 NW. 4th Street.

MC-107450-3 Metropolitan Coach Corporation, now assigned May 29, 1974, will be held in Room 1035, First Floor, Federal Bldg., 400 North 8th Street, Richmond, Va.
MC-C-7851 Sub 1, Joseph S. Triglia—Revocation of Certificates—now being assigned continued hearing April 29, 1974, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC-107515 Sub 869, Refrigerated Transport Co., Inc., now assigned May 6, 1974, at Tampa, Fla., is cancelled and the application is dismissed.

MC 56679 Sub-66, Brown Transport Corp., now assigned May 20, 1974; MC 136155 Sub-2, Gay Trucking Co., Inc.; MC 136230, Interstate Warehousing Corporation; and MC 136285 Sub-3, Southern Intermodal Logistics, Inc., now assigned May 20, 1974, at Atlanta, Ga., will be held in Room E-1, 3rd Floor, North Wing, 1776 Peachtree Street NW.

MC 107012 Sub-193, North American Van Lines, Inc., now assigned May 13, 1974, at Atlanta, Ga., will be held in Room E-1, 3rd

Floor, North Wing, 1776 Peachtree Street NW.

MC 109891 Sub-22, Infinger Transportation Company, Inc., Extension—Savannah, Ga. (Charleston Heights, S.C.), now assigned May 14, 1974, at Atlanta, Ga., will be held in Room E-1, 3rd Floor, North Wing, 1776 Peachtree Street NW.

MC 30844 Sub-477, Kroblin Refrigerated Xpress, Inc., now assigned May 16, 1974, at Atlanta, Ga., will be held in Room E-1, 3rd Floor, North Wing, 1776 Peachtree Street NW.

MC-C-8217, Advance Leasing, Inc., Marilyn Diver, Oral Lee Diver, Douglas Ray Diver, James L. Baker, Earl Baker, James W. Rains, Jim Tatman's Mobile Homes, Inc., and Golden West Mobile Homes, Inc.—Investigation of Operations and Practices—now assigned April 25, 1974 at Dallas, Texas, is cancelled.

MC 116004 Sub-30, Texas-Oklahoma Express, Inc., now assigned May 13, 1974, at Oklahoma City, Okla., is cancelled and transferred to Modified Procedure.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.74-9183 Filed 4-19-74;8:45 am]

**ORGANIZATION OF DIVISIONS AND
BOARDS AND ASSIGNMENT OF WORK,
BUSINESS AND FUNCTIONS**

Modification of Minutes

APRIL 16, 1974.

At a session of the Interstate Commerce Commission, held at its office in Washington, D.C., on the 29th day of March 1974.

It appearing that the Commission voted to approve a modification to the Organization Minute 7.11 (31 FR 11189, August 31, 1965).

It is Ordered, that the Organization Minutes be modified as follows:

Paragraph (c), after "Part 1042" insert "and Gateway Elimination Rules, 49 CFR Part 1065"

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.74-9182 Filed 4-19-74;8:45 am]

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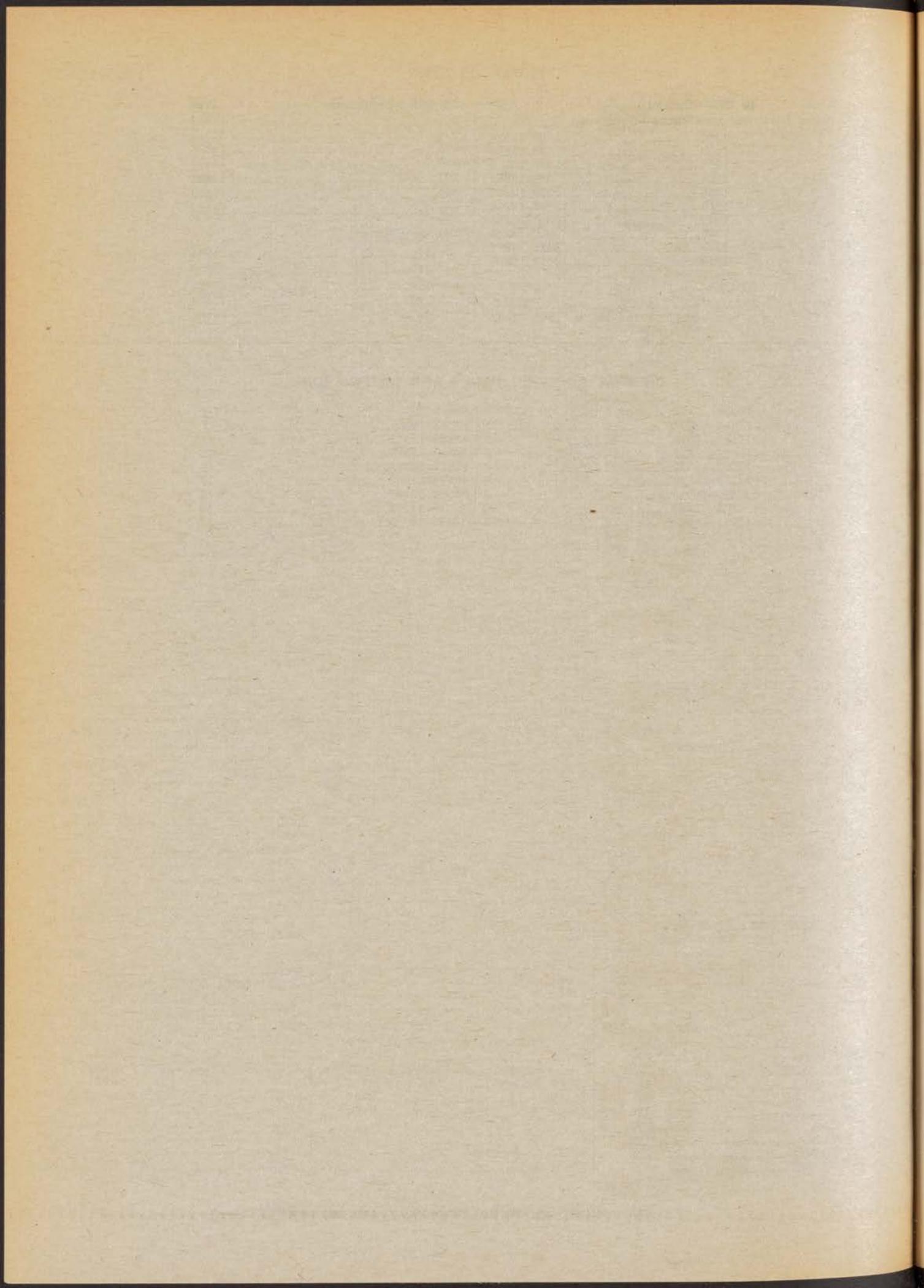
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federal register

MONDAY, APRIL 22, 1974

WASHINGTON, D.C.

Volume 39 ■ Number 78

PART II



FEDERAL COM- MUNICATIONS COMMISSION

CABLE TELEVISION

■

Clarification of Rules and Notice of
Proposed Rulemaking

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 76]

[FCC 74-384; 11288; Docket Nos. 20018-20024]

CABLE TELEVISION

Proposed Clarification of Rules

In the matter of:

Amendment of Part 76 of the Commission's rules and regulations relative to the advisability of Federal preemption of cable television technical standards or the imposition of a Moratorium on non-Federal standards (Docket No. 20018).

Amendment of Part 76 of the Commission's rules and regulations relative to an inquiry on the need for additional rules in the area of public proceedings and qualifications for franchisees, § 76.31(a)(1) (Docket No. 20019).

Amendment of Part 76 of the Commission's rules and regulations relative to requiring additional assurances on the establishment of line extension provisions in franchises—§ 76.31(a)(1), (2) (Docket No. 20020).

Amendment of Part 76 of the Commission's rules and regulations relative to amending existing franchise duration rules—§ 76.31(a)(3) to lengthen maximum term and impose a minimum term (Docket No. 20021).

Amendment of Part 76 of the Commission's rules and regulations relative to an inquiry on the advisability of adding specific rules to § 76.31(a)(3) regarding franchise expiration, cancellation and continuation of service (Docket No. 20022).

Amendment of Part 76 of the Commission's rules and regulations relative to an inquiry on the need for new regulations in the area of transfers of control of cable television franchises (Docket No. 20023).

Amendment of Part 76 of the Commission's rules and regulations relative to a specific requirement in § 76.31(a)(5) that the local official responsible for subscriber complaints be identified in the franchise (Docket No. 20024).

I. INTRODUCTION

1. On February 2, 1972, the Commission adopted the Cable Television Report and Order (37 FR 3252, 36 FCC 2d 143). Reconsideration of Report and Order (37 FR 13848, 36 FCC 2d 326). In that report we adopted a comprehensive set of new rules for most aspects of cable television operation. The report was separated into four main categories:

- Television broadcast signal carriage;
- Access to and use of non-broadcast cable channels, including minimum channel capacity;
- Technical standards;
- The appropriate division of regulatory jurisdiction between the Federal and state-local levels of government.

Particularly as to the last three categories, we stated repeatedly that new regulatory concepts and procedures were being employed and that many of these rules were experimental in nature and would be clarified, modified, or changed

as the situation warranted. The rules were an attempt to create a flexible regulatory framework that took into account the constant and necessary flux inherent in any emerging industry such as cable television. The time has come, after two years of operational experience, to make some modifications and clarifications of our rules to keep pace with the changing picture presented by cable's development and to resolve whatever ambiguities may exist.

2. Our interest in the development of cable television is not passive. While the bedrock of our regulatory authority over cable clearly derives from its use of broadcast signals (see "U.S. v. Southwestern Cable Co.", 392 U.S. 157, "Midwest Video v. U.S.", 406 U.S. 649), this is not where our concern ends. This Commission is primarily responsible for the development and maintenance of a nationwide communication system (Communications Act of 1934 as amended, sec. 1). Cable television is undeniably part of that system and presumably will become a major and integrally vital element of what many see as the broadband communications system of the future. We are concerned that we do not, in our efforts to mold the communications structure of the future, unduly hamper the developing structure of today. Over-expectation and anticipatory regulation can be just as damaging, if not more damaging, than no regulation at all.

3. The need for flexibility in our rules and a willingness to modify them as needed is best illustrated by the technological changes that have occurred within the past two years. In this relatively short time span, we have seen the development of cable television converters that have nearly doubled the maximum channel capacity. Satellite transmission to cable systems has become a technical reality. Two-way subscriber response systems have moved from the drawing boards to test installations. Any regulations of cable television must be designed with enough flexibility to allow for these changes.

4. Two years of experience in administering our rules has also given us the opportunity to pinpoint the weaknesses, identify the areas creating undue confusion or misinterpretation, and catalogue our own mistakes. This process of refining our rules was significantly aided by the reports submitted to us by the special Federal/State-Local Advisory Committee [FSLAC] that was established for this purpose when we adopted the Cable Television Report and Order 37 FR 3252 at 3277, Paragraph 188. That Committee spent more than 250 hours in public meetings debating many of the issues we will deal with here. In many cases, the clarification we are providing today is in response to the confusion or need for more specificity highlighted by those meetings. The final report of the FSLAC Steering Committee¹ has been

¹ The final report of the Steering Committee of the FCC Cable Television Advisory Committee on Federal/State-Local Regula-

thoroughly reviewed by this Commission prior to the preparation of this document. The review included a special meeting held between the Steering Committee and the full Commission in public session on December 11, 1973. The actions we are taking today are not intended to be dispositive of the FSLAC report. That report did provide valuable guidance, however, in the preparation of this document. We expect to continue work that has already been initiated relating to the FSLAC recommendations, and future actions based on the FSLAC report will be so noted.

5. We are issuing this clarification and suggesting modifications only after a great deal of careful study and two years of experience with the present rules. Many interrelated rule making proceedings and requests for waivers, special relief, or declaratory rulings have been received during that time. Some of those pending requests will be either resolved or modified by our action today.

6. This document is intended to both clarify our existing rules and policies and at the same time open new inquiries where appropriate. In areas where a new rule is proposed or the change suggested goes beyond clarification or non-substantive modification, we have so noted it by specifically inviting comments and assigning a docket number to the issue. As in all other notices of proposed rule making and inquiry, comments are invited from all interested parties. We emphasize in this regard, however, that we intend to act expeditiously on these matters. While many of the issues considered today cross the subject matter categories employed in the Cable Television Report and Order, we will attempt to deal with them within that framework to maintain continuity.

II. TELEVISION BROADCAST SIGNAL CARRIAGE

7. We do not intend to suggest any modifications in our signal carriage rules at this time. Several rule makings are outstanding (i.e., non-duplication RM-2275, Docket No. 19995) and will be dealt with in due course. However, some general comments on signal carriage, particularly as it relates to other issues in this report, are appropriate.

SIGNAL CARRIAGE JURISDICTION

8. The fact that this Commission has pre-empted jurisdiction of any and all signal carriage regulation is unquestioned. Nonetheless, occasionally we receive applications for certificates of compliance which enclose franchises that attempt to delineate the signals to be carried by the franchisee cable operator. Franchising authorities do not have any jurisdiction or authority relating to signal carriage. While the franchiser might want to include a provision requiring the operator to carry all signals allowable under our rules, that is

tory Relationships is available for \$6.50 from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22151, Order No. PB 223-147.

as far as the franchiser can or should go. In fact, because of the complexities of our signal carriage rules, even that statement in a franchise could be troublesome. We have been faced in some instances with the unfortunate situation where, because the franchise included signal carriage requirements inconsistent with our rules, we were forced to delay the grant of a certificate awaiting amendment of the franchise. In other cases, where the franchise included a severability clause, we were able to grant the certificate. Even in those instances, it would have been preferable had the franchising authority omitted the signal carriage clauses altogether.

LEAPFROGGING

9. We note that a further suggestion on signal carriage was made by the Federal/State-Local Advisory Committee final report submitted by its Steering Committee (hereinafter referred to as the FS LAC Report). The report designates over-the-air signal carriage as Issue #19 and states:

Signal carriage requirements are and should remain in exclusively federal jurisdiction. Additionally, the Committee recommends that when there is a joint petition by the cable operator and the franchising authority for a waiver of the leapfrogging rules based on a showing of community interest, the Commission should give additional weight to such petitions in considering the waiver request.

We agree with this position and have adopted it in some cases presented to us. (See Commission on Cable Television of the State of New York, 43 FCC 2d 826, FCC 73-1148, CSR-342). We intend to continue investigating such waiver requests on an *ad hoc* basis, and, as noted in the above-cited case, as we gain more experience in this area, we may consider appropriate amendments of our leapfrogging rules (§ 76.59, 61 et seq.) to accommodate the carriage of in-state signals in some or all situations.

SIGNAL DELETION

10. Several procedural changes have also been suggested in this area, particularly as they relate to applications for certificates of compliance. In § 76.13 (a) (1) and (b) (1), we require indication of the signals an operator is authorized to carry as well as specification of the signals requested to be added to that authorization. In many instances, this has led to situations where there are clearly many more signals authorized than could technically be carried or are desired. We intend to amend this rule to require that the applicant indicate, when applicable, what signals should be deleted from the authorization as well as added.

11. We recognize that, in many cases, the reason there are more signals authorized than can technically be carried is that some of those signals are only carried in part. This is consistent with § 76.55(b) which simply requires that a particular program may not be altered or deleted in part. The carriage of signals not required by our rules is left to the discretion of the cable operator. In those cases, however, where signals are going

to be dropped completely, we want to be apprised. A procedural change in § 76.55 (b), should be sufficient to accomplish that result.²

III. ACCESS TO AND USE OF NON-BROADCAST CHANNELS

12. A comprehensive and innovative set of new rules regarding cable television access channels was adopted in our 1972 regulations. In the Report and Order in Docket No. 18396 et al., we clearly stated the basis and rationale for these new rules:

Broadcast signals are being used as a basic component in the establishment of cable systems, and, it is therefore appropriate that the fundamental goals of a national communications structure be furthered by cable—the opening of new outlets for local expression, the promotion of diversity in television programming, the advancement of educational and instructional television and increased informational services of local government. (Para. 121.)

13. We reiterated this over-all concern for the development of cable television in the reconsideration of the Cable Television Report and Order, 37 FR 13848, 36 FCC 2d 326:

*** Cable Television as it grows, must be integrated into a nationwide communications structure. Were we to permit an uncontrolled development of cable we would be breaking our obligations under the Communications Act of 1934, as amended. This Commission was created, amid the chaotic development in the field of radio, *** to make available, so far as possible, to all the people of the United States a rapid, efficient, nationwide, and worldwide wire and radio communications service. *** (Section 1, 47 USC 151). As an integral part of interstate broadcast transmission, cable operators "cannot have the economic benefits of such carriage as they perform and be free of the necessary and pervasive jurisdiction of the Commission" (*General Telephone of California v. FCC*, 413 F 2d 390, 401 (C.A.D.C.) (1969), Cert. denied, 396 U.S. 888. Thus, we conceive it to be our obligation to consider the actual and potential services of cable television and create a Federal policy which insures that these services can be distributed equitably, on a nationwide basis as merely one link in our communications systems ***. (Para. 74.)

From watching the development of our access program, we are now, more than ever, convinced of the propriety and need for such a program. Access is still in its infancy and it has a long, hard struggle ahead before it becomes an accepted part of the communication process in this country. We knew this would be the case when we instituted the rules noting:

*** We recognize that in any matter involving future projections, there are necessarily certain imponderables. These access rules constitute not a complete body of detailed regulations but a basic framework within which we may measure cable's technological promise, assess its role in our nationwide scheme of communications, and learn how to adapt its potential for energetic growth to serve the public. (Para. 117.)

² Formal action to effect this procedural amendment will be announced in a separate Commission document.

14. We believe that the access channels we have required will eventually serve the public in many ways. However, we are also aware that the requirement for providing these channels imposes a burden on the cable operator, particularly on the small, older systems now required to provide access channels and the new large systems that provide services to many small communities. We also note that many franchisors outside the major markets are now including access requirements in their renewal proceedings.³

ACCESS ON CONGLOMERATE SYSTEMS

15. For the most part, our access channel requirements do not appear to be overly burdensome. To date we find no reason to alter the rule requiring at least four access channels (public, educational, government, and leased). The application of that regulation, however, must stand on a flexible and reasonable basis. One issue that is being raised in this regard, and which we wish to clarify here, is the effect of the rule in multi-jurisdictional systems. In the Cable Television Report and Order, we stated that "*** To the extent that the access requirements pose problems for systems operating in small communities in major markets, such systems are free to meet their obligations through joint building and related programs ***." Our intent here is to make clear that we have and will continue to entertain petitions and special showings to allow the joint use of access channels and facilities. (e.g., Century Cable Communications, Inc., CAC-1914, FCC 74-63.) There is no need, as we see it, to require a system providing service to a large number of small suburban communities to have a separate public access channel for each one of those communities when in reality none of those access channels is or would likely be fully utilized. In fact, in such a situation, it might be better, in terms of fostering public access channel use, to have one or two channels significantly used and "lit" rather than a multiplicity of channels "dark" for a major portion of the time because of scarcity of programming. On the other hand, we want again to put all cable operators on notice that although we may grant waivers of immediate provisions for access channels we still expect and will require operators to have sufficient channel capacity to meet any reasonable demand.

CHANNEL CAPACITY

16. Questions arising out of our channel capacity rules (§ 76.251(a)(1)) also indicate that clarification is necessary. Our efforts to establish minimum/maximum channel capacity requirements were based on a study of the existing technology at the time of the adoption of

³ We allow the addition of such requirements in smaller market franchises so long as they are consistent with and no greater than our rules for the major markets. See Cable Television Report and Order, 37 FR 3252, at 3272, Para. 148, § 76.251(b).

those rules. We were attempting to indicate to the industry that they must have sufficient channel capacity to meet foreseeable future demands, and, at the same time, we were cautioning franchising authorities that requiring excessive technological capacity was detrimental to our overall program. A "20-channel" system, in essence, requires construction that is sufficient for any currently foreseeable demand; that is, single cable with converter, dual cable, or eventually dual cable with converter. We continue to be of the opinion that this is sufficient. We note that some communities have contemplated requiring massive extra bandwidth provisions, such as operational capacity for 120 video channels. The present need or value of such excess has yet to be proved. Apparently the theory is that many discrete groups could thereby each have their own separate access channel. However, it appears from current experience that, for now, the more successful access experiments are those where a cooperative effort is made by many groups to fill an access channel. The advantage of such cooperation is that it results in the channel's use for a substantial portion of the day so that viewers become accustomed to seeing programming originate on the channel as a normal course of events rather than as an occasional special event. The provision for special access channels for various discrete groups may, we fear, work to their detriment in that rather than pooling their efforts to program one channel, each will go its separate way and ultimately none may succeed. We envisioned and continue to promote the concept of pooled facilities. For instance, the school systems in a community should be able to cooperate to program an educational channel. Their time and resources would be better spent and more effectively utilized by joint effort than by each demanding his own channel and then not being able to fully utilize it.

FACILITY REQUIREMENTS

17. Our access program, and the burden it imposes on the cable operator, has been carefully weighed and we consider it to be both reasonable and in the public interest. We are requiring the provision of free access channels and some facilities to utilize them. We envision this access program as an opportunity for a multiplicity of persons and groups to become active in the use of the communications media for the first time. For access channels to work the individuals and groups being offered access must design their own programs, develop their own resources, and foster the use and value of the channels. This is not accomplished by demanding that the cable operator, having provided the free channels, should now also pay to program the channels. An unfortunate misconception seems to have developed because of some over-expectations at the prospect of free access channels. Demands are being made not only for excessive amounts of free equipment but also free programming and engineering personnel to man the equipment. Cable sub-

scribers are being asked to subsidize the local school system, government, and access groups. This was not our intent and may, in fact, hamper our efforts at fostering cable technology on a nationwide scale. Too often these extra equipment and personnel demands become franchise bargaining chips rather than serious community access efforts. We are very hopeful that our access experiment will work. We recognize the difficulties inherent in developing access programming and will have more to say on the subject later. We do not think, however, that simply putting more demands on the cable operator will make public access a success. Access will only work, we suspect, when the rest of the community assumes its responsibility to use the opportunity it has been provided.

18. In order to clarify the meaning and intent of our access requirements, we will review them here as they appear in our rules.

19. Sections 76.251(a) (1) and (2), as noted earlier, are meant to assure that any new cable system being built is designed with sufficient capacity for any foreseeable future demand. We think these rules adequately meet that goal and see no need to modify them. It should be noted, however, that we recognize that in some cases strict application of these rules would not be reasonable. This is particularly true where, because an older system is already carrying a great number of grandfathered signals, or a new system must carry a large number of "local" stations, a system would have to have an inordinately large channel capacity in order to double its bandwidth pursuant to § 76.251(a) (2). We will continue to entertain waiver requests in such circumstances. This does not mean, however, that a waiver will be granted to allow a system to continue operating without any extra capacity. All systems covered by our rules will have to have sufficient capacity to meet their access obligations and have some capacity left over for future use. Waivers will be granted in instances where the extra capacity required by the rule would appear to have no foreseeable relationship to future demand.

BANDWIDTH ACTIVATION REQUIREMENTS

20. Some questions have been raised as to when the extra bandwidth must be activated. Some systems claim 20- or 24- or 26-channel capacity by having the capability of installing converters on a single trunk system. We have occasionally been asked when that converter must be installed. Our application of this rule is purely pragmatic. The rule requires bandwidth " * * * available for immediate or potential use * * * ." No system will receive a certificate of compliance if its activated capacity is insufficient to meet our access requirements (including at least one channel available for leased use). So long as the system always has that much immediately available and usable capacity, it will be considered in compliance with our rules, assuming, of course, that the remaining capacity can be activated without significant rebuilding or delay.

CHANNEL ACTIVATION

21. In this regard, we believe it is necessary to clarify the language of the channel expansion formula in § 76.251(a) (8) of the rules. This Section requires that a new designated access channel be made available when the first channel is in use for a specified period of time. The "time trigger" (channel use for 80 percent of the time during any consecutive three-hour period for six consecutive weeks) applies to each channel individually. For instance, if the public access channel is filled to that degree, a new public access channel must be designated upon request regardless of the amount of use being made of the other access channels. Additional special designated channels need not be provided free of charge. Reasonable charges consistent with our access policy can be assessed so long as the free channel in each category remains available on a non-discriminatory basis.

TWO-WAY

22. In § 76.251(a) (3), we require that the technical capacity for non-voice return communication be designed into any new cable facility affected by the rule. We fully explain the rationale for this requirement in Paras. 128, and 129 of the Report and Order. This rule does not require that the cable system be operational in the return mode. Once again, as in the case of channel capacity, we want to make sure that new systems being built will be able to meet all present and foreseeable future service obligations without the need for significant rebuilding or delay. We are aware that at present there are few, if any, proven, economically viable uses for two-way cable communications. To require operational two-way systems at this time, therefore, might impose unreasonable costs on the cable operator. In some cases, we have noted that franchising authorities are requiring the immediate operational installation of two-way facilities. Before a certificate of compliance is granted in any such case, we require a showing of the intended use of such facilities and a showing that such a requirement will not adversely affect the system's viability or otherwise inhibit it from complying with the federal goal of a nationwide cable communications grid.

PRIVACY

23. Many questions and fears have developed about the use of two-way equipment. In this regard, the statement made in the FSLAC Report is most appropriate:

The issue of privacy and its relationship to the legitimate uses or potential uses of cable television is a highly emotional one. The fears of many, that cable television will bring with it "1984-type" surveillance and monitoring is in the public mind regardless of the technological factors that argue against such uses. These fears must be met. At the moment, the potential for over-reaction to such fears and the inclusion of impractical and prohibitive allegedly protective requirements in franchises prompts the Committee to suggest that: Protection of subscriber privacy may take the form of regulation and judicially enforceable sanctions, and may be ad-

dressed at federal, state or local levels. The Committee believes that the principal problem area relates to the individualized monitoring of subscriber viewing habits, without explicit advance consent, and the disclosure of such information. Restraints on such activity should not impede systemwide, non-individually addressed "sweeps," or the operator's acquisition of information for purposes of verifying system integrity, controlling return path transmissions, or billing for pay services.

24. We agree fully with the Committee on this point. Without denigrating the well-intentioned pleas for caution voiced by many groups, we feel that there has been much misinformed over-reaction to this problem. Some franchises have included provisions to guard against monitoring that are not only impractical but often impossible to comply with. Other provisions have been included which purport to prohibit activities by the cable operator, such as generalized performance "sweeps," which are necessary to assure system integrity. Equipment to "monitor monitoring" has been required that does not even exist. It should be sufficient at this time to caution franchising authorities against excessive regulation in this regard. We are watching this situation carefully and will take any action necessary to protect the privacy of cable subscribers. Such action may take the form of added regulations at the agency level to assure privacy or possibly even Congressional action.⁴ All governmental jurisdictions should be on guard to guarantee that the right of privacy is maintained. As we noted when we instituted the two-way requirement, any use of two-way communications, any activation of return service must always be at the subscriber's option (Para. 129).

FREE CHANNELS

25. In § 76.251(a) (4), (5), and (6), we require the provision of public, educational, and governmental access channels. We continue to view these channels as experimental. After only two years of experience with these rules, it would be premature to characterize the experiment as a success or failure. We would prefer more experience before significantly changing these requirements. Once again, however, it appears necessary to reiterate that until we can gain more experience with the experiment already under way, we are reluctant to allow major alterations by individual franchising authorities without good cause. Unquestionably, in some areas, because of particular local needs and facilities, different access programs might be useful. In those cases, we will entertain petitions for waiver of our general rule. To date, however, we have received several applications for extra access channels and equipment on the "more is better" concept rather than on any actual need or plan for use. As we have

already noted, "more" may not be better, and, indeed, may be worse. Any proposals in franchises requiring access channels or facilities in excess of what is required in our rules must be shown to be reasonable and necessary for a planned local program of use. A showing in the application for a certificate of compliance must be made that indicates what the nature of the added requirement is, how it will be implemented, who will pay for the extra services and equipment, how much they will cost, and how the costs, if borne by the cable operator, will add to rather than detract from his overall service offering.

ACCESS CHANNEL REGULATION

26. As to the actual plans for use of the access channels we have required, we want to emphasize that there is a great deal of flexibility. Different communities, operators, and access groups will find various ways of utilizing their channels most effectively. We expect that many variations will be tried. It would be a mistake for any regulatory authority or board to attempt, at this formative stage, to delimit too particularly how the access channels should work.

27. Our effort at creating a public access channel was meant to give the maximum access possible to local groups. It is for this reason that we initially described the channel as one that should be available on a "first-come, first-served non-discriminatory" basis. The best example of why we say that it is premature to establish firm rules for the access channel is the myriad number of questions we have been asked arising from that statement. By attempting to answer some of them here, we hope to clarify the policy considerations behind our access rules.

28. Some have questioned whether our rules would allow a particular person or group to reserve access channel time on a long-term basis, e.g., every Thursday night from 8 to 9 p.m. We did not intend that our rule would prohibit an access programmer from developing a viewership at a particular time by consistent programming. Therefore, this type of reserved time would be consistent with our rules. However, we also want to assure that all desirable time slots are not "frozen" and thereby monopolized or not available to the occasional programmer. Some balance is necessary. We are allowing cable operators to design their access channel rules to accommodate both interests and shall remain sensitive to the possibility that abuses might develop.

EDUCATIONAL ACCESS

29. Our educational access channel rules were designed to promote the use of that channel by educational authorities in the community. Much was claimed in the original dockets which led to the adoption of this rule about the potential for educational channels on cable. Little has developed. In retrospect, it appears that our limitation of one free educational access channel was wise. Designating vast channel capacity for

education only to see it lie fallow serves no purpose. Two questions have repeatedly been raised about our educational access rules: (1) Who qualifies as an "educational authority" to use the channel, and (2) what extra equipment, assistance, etc., can be demanded or offered for educators in a franchise agreement?

30. Our concept of "educational authority" was not meant to restrict the use of this channel to the local public school board. Any school, college, or university, public or private, formal or informal, should have the opportunity to air programming on this channel. The one exception to this interpretation would be commercial educational enterprises (computer schools, beauty schools, etc.) that would in essence be using the channel for advertising which we have specifically disallowed on the educational access channel. Any bona fide educational interest should have access to the educational channel. We envision a working educational channel as one where the programmers work out a reasonable ability to program this channel nor should cable operator to utilize this opportunity offered to them. It might be possible, for instance, for a high school and a college to produce complementary instructional programming of benefit to both. It is not the cable operator's responsibility to program this channel nor should he be expected to.

31. The problem of increasing demands in franchises for extra channels, money, equipment, personnel, etc., will be dealt with in section V of this document.

LEASED CHANNELS

32. It is too early to discern any trends regarding our leased access channel rules (§ 76.251(a)(7)). It remains our intent to keep these channels as free as possible from any regulation that might restrict or artificially alter their growth. This is particularly true in the area of rate regulation. We have pre-empted this area with the explicit purpose of allowing the market place to function freely. We note that many authorities are already talking about regulating leased channel rates and/or rates for pay cable services. It is premature to regulate along these lines. Such regulation might destroy any chance for this emerging communications service by stifling competition, setting incorrect rates, and establishing an atmosphere which deters experimentation innovation, or speculation. We have pre-empted this area to avoid those pitfalls. It is unclear how a regulatory body could now establish reasonable rates for services that are untested, unproven, and which have not even established a consistent record as to costs, expenses, subscription, etc.

33. As we noted, in the Cable Television Report and Order, Para. 130, 131, dual jurisdictional regulation of access channels would cause great confusion and might inhibit their growth on a nationwide basis. Different regulation, rate structures, etc., for instance, on channels where a par program or per channel charge is made might unduly

⁴ We note that the recently released report on Cable Television by the President's Cabinet Committee on Cable Communications also suggests that the guarantee of privacy be one of our principal concerns.

hamper the obviously interstate effort involved by cable operators and programmers to secure a large enough audience to make this new communications medium a viable economic success. We cannot allow such a multiplicity of regulation to detract from our national program.

34. While we have decided to prohibit non-federal rate regulation of leased channel uses or users at this time and have further announced our intention of refraining from imposing any federal regulations now, some guidelines regarding leased channel operation might be helpful. We recognize that many of the early efforts at rate regulation were motivated by concerns over potential abuse of the cable operator's position. We noted such a potential in the 1972 rules (Para. 126). To date there has been little evidence that the cable operators are hoarding capacity for their own uses or are setting preferential or prohibitive rates to maintain a monopoly position. Should such a situation develop, we will, of course, stop it. It is in the cable operator's best interest for this not to happen. All parties must be given access to the leased channels at rates not designed to prohibit entry. This is especially true in the area of pay cable. Evidence that cable operators are restricting entry would obviously lead to demands that cable be re-defined as a common carrier. We do not think this would be a good idea at this time. In fact, it would probably be detrimental.⁵ But abuse, particularly of leased channel access, will surely result in far more restrictive regulation.

35. Some cable operators and franchising authorities have suggested a program whereby preferential rates for leased public, educational, and governmental channels are offered to non-commercial users. Thus, when the free channels are filled, or when, for instance, an educational user wants to put specialized programming on a separate educational channel, he could lease a channel at a lower rate than would be available to a commercial user. This concept appears sound, and we do not discourage cable operators from experimenting with such preferential rate structures. Specific franchise requirements or controls of this nature, however, remain pre-empted. We favor a market place experimentation in this area for now.

IV. TECHNICAL STANDARDS

36. We repeatedly stated in the original cable rules and in the reconsideration of them that our technical standards were only a first step in what we expected would be a long process of refin-

⁵ This, of course, is consistent with the position we took in the Cable Television Report and Order, Para. 146. It does not mean that at some future time, once cable technology has sufficiently matured, that common carrier status would necessarily still be inappropriate. We note that the same position has now been taken by the President's Cabinet Committee on Cable Communications.

ing the technical parameters of cable television. In the Reconsideration of Cable Television Report and Order, we indicated that franchising authorities could also promulgate technical standards. That decision has now been brought into question.

37. The FSLAC report, while acknowledging an apparent problem regarding unrealistic standards being developed at state and local levels, recommends that this dual jurisdictional approach be maintained at least until the completion of the FCC Cable Television Technical Advisory Committee's (CTAC) work. However, the FSLAC report also recommends (Issue #4) that we issue cautionary advice to franchising authorities noting that our rules should suffice in a majority of cases and that any more stringent standards must be enforced locally. This recommendation also urges that we retain oversight authority to deal with any unrealistic standards that may be promulgated.

38. We recognize that this is an area of significant conflict. The experience we have already gained from CTAC's preliminary work and the confusion engendered by some of our original rules indicates that much more work needs to be done. Our technical advisory committee is making progress in this direction.⁶ Most State Governors have already named liaisons with the Committee at our request so that we may coordinate as much of this activity as possible. The question now arises as to whether we should institute, at the least, a moratorium on the promulgation of non-federal technical standards until the completion of CTAC's work.

39. A petition for rule making has already been received from the National Cable Television Association regarding technical standards, pre-emption,⁷ and the opinion of our own Office of Chief Engineer suggests that the multiplicity of conflicting technical standards has become a problem and might not be in the public interest. There has been considerable comment on the desirability of uniform standards and argument that the lack of such uniform standards could conceivably hamper the development of cable television because technical equipment could not be manufactured for nationwide use.

40. Understandably, the imposition of a moratorium or the complete subject matter pre-emption of technical standards are issues of considerable debate. For this reason, we invite interested parties to submit comments on the question of whether cable television technical standards should be totally pre-empted or a moratorium on additional non-federal technical standards should be imposed until the completion of

⁶ The Committee expects to complete the first phase of its work by late this year.

⁷ RM-2196 *Petition for Rule Making To Standardize Technical Standards* filed May 23, 1973, by the National Cable Television Association.

the technical advisory Committee's work.⁸

V. FEDERAL/STATE-LOCAL RELATIONSHIPS

41. In our 1972 rules we adopted an ambitious program of creative federalism in the area of cable television franchising. In essence, we developed an approach of dualism toward the granting of cable franchises. We recognized that the complexities and national character of cable television called for nationwide rules and guidelines. At the same time, we acknowledged that the essentially local service offered by cable television, at least in its formative stages, could best be developed through local participation and enforcement. Our rules attempted to blend these needs into a cohesive, cooperative program between federal and local authorities. This effort appears to have been basically successful.

42. One significant new development, however, has become a complicating factor. State governments have begun asserting a regulatory role in cable television, thus adding a third-tier to the regulatory scheme. When we adopted our rule we envisioned a system whereby federal rules and guidelines would be complemented by one other regulatory authority—the so-called "local" level of government. We did not specify cities or municipalities because we recognized that in some states the state government would serve as the "local" authority rather than some smaller political subdivision. Indeed, this was the case in 1972, since several states had already asserted state jurisdiction over cable franchising (e.g., Connecticut, Nevada, Rhode Island, and Vermont). However, at that time there were no states asserting an additional regulatory function while leaving other regulatory and franchising matters to localities. It is this latter development that concerns us. A major portion of the FSLAC report deals with this "three-tier" problem (see Part II, FSLAC Final Report). In our December meeting with the FSLAC Steering Committee this was also a prime topic of discussion. We intend, in the near future, to deal with this question specifically. For the purposes of this document, however, it should be sufficient to caution all regulatory bodies involved or considering involvement in cable television that we are concerned about the developing duplicative and burdensome overregulation of cable television.

43. The purpose of this notice of proposed rulemaking and memorandum opinion and order is to clarify and in some cases modify the existing rules. Our experience to date indicates that one of the areas most in need of clarification is our franchise standards and their relationship to the rest of our rules.

44. Once again, we think it would be easiest to review all of our franchising

⁸ Comments filed in response to this *Notice of Proposed Rule Making* should be referred to Docket No. 20018.

standards here in the order that they appear in the rules. For present purposes, the use of the term "local" authority should be read as referring to the local or state authority, whichever is appropriate in the particular jurisdiction. Generally, we assume that whichever non-federal authority grants the franchise will also be responsible for complying with all the other franchise-related aspects of these rules.

FRANCHISING AUTHORITY

45. In § 76.31(a), we require that cable operators in order to receive a certificate of compliance, must have a " * * franchise or other appropriate authorization." In most cases, this has not caused any difficulties. It is not necessary that the document in question be called a "franchise." Depending on the laws of the particular jurisdiction, the authorization may take the form of a franchise, franchise and ordinance, license, permit, certificate of convenience and necessity, etc. The point is that documents must be provided showing that authorization from the appropriate local authority or authorities has been granted to the applicant to build a cable television system. This authorization must be complete before we will process an application for a certificate of compliance. The applicant must be in the position of being able to begin operation or construction immediately upon receipt of a certificate of compliance. All local and state processes (if any) must be completed before we will certify that an applicant has complied with our rules. It would be administratively burdensome and unnecessarily time consuming for us to process applications only to find that the applicant failed to secure full local approval to build and operate a proposed system. We will not process an application at this time which contains only the municipal franchise if the applicant is required by state law to also have state approval of the franchise.

46. We have had some difficulty when there is apparently no appropriate authority in the state empowered to grant a franchise. To date, we have, consistent with paragraph 116 of Reconsideration, granted certificates in such cases when an appropriate alternative proposal is supplied. We do not like this procedure but see no way around it so long as some states delay designating the appropriate local jurisdictional authority. It should be reiterated, however, that before we will proceed with an application claiming that there is no local authority capable of issuing a franchise or other appropriate authorization, we expect formal statements to that effect from the local authorities. We have no desire to become involved in the interpretation of state laws. We assume the regularity and accuracy of local official interpretation of state law unless specifically shown otherwise. We would urge, however, that in the few remaining areas where this problem still exists it be clarified at the state level in the near future.

47. Another, although less frequent problem, has come to our attention where

a franchising authority, while apparently having the authority to grant a franchise or other appropriate authorization consistent with our rules, declines to do so. Alternative proposals by the cable operator in such cases will not be accepted. Where a franchising authority has the power to comply with our rules but does not, a certificate of compliance will not be issued.

FRANCHISE STANDARDS

48. Section 76.31(a) also requires that the franchise contain " * * * recitations and provisions consistent with the following requirements." This has caused problems in cases where, although our rules were indeed followed, the fact that they were was not stated in the franchise. We have allowed applicants to remedy minor deficiencies by official communications from franchising authorities, thus avoiding the time consuming process of franchise amendments. Such a less formal process has allowed us to administer our rules with flexibility and will be continued. This is not to say that substantive omissions can be corrected in this manner.

49. In cases where, for instance, a statement that a full public proceeding was held was not included in the franchise and we find that such a proceeding was in fact held, we will not reject the application. Of course, franchising authorities and applicants would be wise to comply totally with the letter of our rules. We are simply stating here that we intend to apply our rules reasonably and see that their intent is followed even if, in some instances, their particulars are not. As always, such decisions will be made on a case by case basis, and, of necessity, such consideration will unavoidably slow the certifying process.

FRANCHISEE SELECTION—PUBLIC PROCEEDINGS

50. We think that the intent of § 76.31(a) (1) is clear. Prior to the selection of a franchisee, we expect the franchising authority to investigate the applicants' legal, character, financial, technical, and other pertinent qualifications. We also require that the public be given the opportunity to become involved in this process. There are many ways that this can be done. Many of the larger cities have had comprehensive hearings on the design of a cable ordinance. Others have established citizens' committees which held open publicized meetings and reported back their findings to the local authorities. Smaller localities, as a rule, have confined the process to their regular city council meetings. All of these methods are presently acceptable.

51. The purpose of our present rule is to assure that the public has been given notice and a right to be heard regarding the development of cable television in any particular area. We, of course, cannot guarantee nor would it be possible to require that all public input be heeded or adopted. We do not intend to act as a "court of last resort" for those who disagree with the decisions of their

elected officials. Our present requirement for public proceedings is administered on the basis of a "reasonable man" standard. So long as the public has been given a reasonable opportunity to participate in the franchising process, we currently consider our "public proceeding" requirement as having been met. We presume the regularity of action by local officials. Except in the extraordinary case, if local officials assure us that they have made appropriate investigations of the franchisee's qualifications and that the public has had an opportunity to participate in the process we will not delve further into the particular methodology or decision factors in any specific franchise grant.

52. Some have argued that we should strengthen these rules. The FSLAC report (Issue No. 2) recommends that we articulate minimum due process standards. The National Black Media Coalition (RM-2278 filed November 12, 1973) makes a similar request and suggests further that we adopt very specific notice and time requirements for public meetings. There have also been suggestions that we require specific information that should be requested or given to franchising authorities prior to the selection of a franchisee.

53. We are not sure that such an approach is practical in the dual jurisdictional program we have set out. We recognize that the procedures for granting franchises differ in the various jurisdictions. There are questions whether such procedures are susceptible to nationwide regulation or whether the procedures as well as the general inquiry into the qualification of franchise applicants would better be left to local officials. We invite any interested party to comment on these questions.⁹ Should more specific rules be adopted to articulate the appropriate public proceedings required prior to the selection of a franchisee (type and length of notice, etc.)? Should franchising authorities be given specific guidelines and requirements on the information to be considered prior to the selection of a franchisee? And in either case, if the answer is yes, what should the guidelines or recommendations be and how should they be enforced?

54. Of course, while we proceed in this inquiry, our "reasonable man" doctrine will remain in effect. By way of advice to authorities preparing to embark on the franchising process, particularly in the larger urban areas where there is a great deal of citizen interest in cable, experience suggests the following:

a. Publicly announced meetings specifically on the topic of cable television are most helpful. These meetings can be used to educate both the citizens and the city officials on precisely what cable is and is not and how cable relates to the needs of the particular locality.

b. Specific procedures for granting the franchise should be established, published,

⁹ Comments filed pursuant to this Notice of Proposed Rule Making and Inquiry should be referred to Docket No. 20019.

and followed. It should be noted that, as has already happened in several cases, not following to the letter a municipality's own rules can cause considerable delay and acrimony.

c. Cities that have initially established an ordinance on cable television and have approved it without looking first to who will receive the franchise have found this to be a beneficial procedure avoiding many of the pitfalls involved in an unrealistic bidding contest on a combined franchise and ordinance. Such bidding contests, with cable operators and city officials offering or demanding provisions unrelated to the actual needs of the city or viable operation of the system, are harmful to all parties.

d. An open, written bid proposal by all applicants is helpful but care should be taken lest this become another form of bidding contest. It should be noted by cities and franchise alike that whenever a franchise application is incorporated by reference in a franchise it must be made part of the application for certificate of compliance from us. It will be reviewed for compliance with our rules in such a situation.

55. The process of soliciting bids for a cable television franchise often leads to excesses in both demands and offers. As we just noted, any bid application incorporated by reference in the franchise will be reviewed for consistency with the cable television regulations we have established. The fact that an "offer" was tendered and accepted by the franchising authority rather than demanded by that authority makes no practical difference in the administering of our rules. We look at all provisions, particularly for extra services or equipment, that are enforceable against the franchisee regardless of how they originated.

56. We do not mean to imply that any of the particular suggestions mentioned above are necessary to comply with our present requirements. They are simply illustrations of some successful approaches to the problem. In essence we anticipate for now that the franchising process includes open access to the decisionmaking process both for citizens and applicants, fairness to all parties, and consistency in the administration of any rules adopted to grant the franchise.

57. Many parties have asked whether we intended our current rules on public proceedings to include franchise renewal proceedings. The simple answer is yes. We have made no specific requirements either in the initial grant procedures or in renewal procedures. We do not require that there be written bids or even that there must be competitive procedures. In some cases, negotiated bids with selected applicants may be appropriate. These are matters for the franchising authority to decide. Particularly in renewals, which we will discuss more fully later, there may be no reason for competitive bidding. In both initial and renewal proceedings, however, we do require open access, consistency, and overall fairness. We may add new requirements as a result of the inquiry we have just initiated in this area but these minimums, we are confident, will not change.

CONSTRUCTION—LINE EXTENSION

58. In both § 76.31(a) (1) and (2), we refer to the "adequacy and feasibility of construction arrangements" and that the cable operator must "equitably and reasonably extend energized trunk cable." Confusion arising from these requirements prompts further clarification.

59. It was our intent that all parts of a franchise area that could reasonably be wired would be wired. The initial problem we were trying to cope with was the "hole in the donut" situation that could have developed in larger markets, that is, the wiring of the more affluent outlying areas of a city while ignoring the center city or the wiring of the "desirable" section of town and not providing the communications benefits of cable to the poorer areas. It now develops that in most instances this is not as much of a problem as was feared. In fact, the problem is reversed. The high density areas are being wired but the outlying, less populated suburbs are not.

60. Clearly, this problem can best be dealt with at the local level since every community presents unique demographic vagaries. Some over-all guidelines, however, should be set out. Obviously, the ideal case is where a franchisee is required to wire the entire franchise area. This is our present rule. The purpose of the rule was to assure that no "cream-skimming", wiring just the economically lucrative portions of a franchise area, would take place. We are aware, however, that many franchises are being granted that do not encompass the entire political subdivision of the grantor. Such grants are appropriate so long as they are not used as a device to deprive certain portions of the population of service. In some cases, cities decide to grant multiple franchises to different franchisees for various discrete sections of the franchise area. This is acceptable so long as the ultimate result is complete coverage of the area. Clearly, if the area was subdivided in such a way that one area would be highly lucrative while another was marginal and not sought after, the result would be "cream-skimming." This would be unacceptable. Other jurisdictions define the franchise area by way of a so-called "line extension" clause, that is where the cable operator is only required to wire those parts of the political subdivision that contain a specified number of homes per mile measured on some stated formula or base. The numbers we have seen range generally from 30 to 60 homes per mile. In some cases, we acknowledge such a formula is justified. The potential subscribership in a particular community may be marginal in terms of system viability, and the extension of lines to citizens in outlying areas or pockets might spell the difference between success and failure of the system. In other cases, however, systems have apparently

sought to maximize profits by only serving densely populated areas even though an averaging of the density figures to include those miles of cable plant in the sparsely populated areas indicated that the system would still be viable.

61. A middle course has been adopted in some instances whereby a formula is established in the franchise so that if outlying pockets of viewers wish the cable extended to them they must pay the specified costs involved in extending the trunk line.

62. We can see reasonable justifications in all of these approaches. They point up the necessity of local involvement in the cable process to deal with the unique problems presented by various communities. We think it would be a mistake to attempt to specify a nationwide rule on this point. Indeed, it might be very difficult to create any such rule even on a state by state level. This is a job for the localities.

63. Because we recognize this problem, we have and will continue to grant certificates of compliance to applicants whose franchises do not require our ideal, the wiring of the entire community. However, before we do, we want assurances in the application and from the franchisor that the public, and particularly those citizens directly affected by the exclusions or conditional wiring provisions, are informed of the effect of such provisions before they are adopted. In at least some cases such notification has been accomplished by local newspaper articles including maps indicating the specifically affected areas. In others, local officials directly contacted affected homeowners. Unfortunately, however, in many cases line extension policies were set without any consultation with the citizens involved, and at least a few instances have been found where even the franchising authority did not fully comprehend the effect of its actions. We are not prohibiting line extension provisions in franchises, but we do intend to require that there be a showing that such provisions were developed knowledgeably and publicly. Any line extension formulas arrived at under these conditions are likely to be reasonable, having taken into consideration costs, population density and averages, terrain problems, long range land development plants, etc. under public scrutiny.

64. Since the assurances we are requesting do not presently appear in our rules, we plan to make the appropriate amendments consistent with the proposal outlined above. We invite any interested party to comment on this suggested addition to our rules. Any other proposals submitted aimed at remedying this problem will also be considered prior to the adoption of any specific new rule or filing procedure.²⁰

²⁰ Comments filed pursuant to this notice of proposed rule making should be referred to Docket No. 20020.

COUNTY-WIDE FRANCHISES

65. This entire discussion of franchise area delineation takes on even more immediate importance in the many incorporated, county-regulated areas of the country. Clearly a large county with many non-contiguous population pockets does not expect one franchise to wire the entire county, particularly at the rate of construction we have recommended. For this reason, we have consistently contacted applicants for certificates of compliance with blanket county franchises and requested more specific information on what areas the system plans to serve. Certificates of compliance will only be granted for those specified areas, not for an entire county, unless the applicant truly intends to serve the entire area within a specified construction time schedule.

66. In most instances, county franchisees are in fact developing systems for particular unincorporated communities within the county. It would be a significant help to us if county governments designated what they considered to be the discrete communities within their jurisdiction. Such delineations are, after all, uniquely a part of the responsibility of local officials. Their conclusions will have significant impact on the applicability of our rules (for example, in the area of our filing and access channel requirements which apply to each discrete community).

EXTENSION OF SERVICE

67. One of the most common complaints about cable television received by this Commission is a potential subscriber's inability to obtain service. This generally is caused by one of three situations: there is no cable television system in the locality; there is a system, but it will not extend its lines; or there is a system in an adjacent jurisdiction, and it is unable to extend beyond its franchise area.

68. In the first instance, of course, there is little that can be said other than that the community should, if there is substantial interest, seek a franchisee. The second case, refusal to extend service, relates directly to our previous discussion of line extension policies. The third problem, however, is more difficult.

69. In an increasing number of cases, we are finding that newly developed areas, housing developments and the like, find themselves unable to obtain service because they are located either at an extreme fringe or outside the franchise area. This is an unavoidable and vexing problem that can only be remedied by cooperation and planning. The FSLAC report (Issue #15) comments on this situation in detail and we think their conclusions are a helpful guideline to all regulatory authorities:

Extensions of service, both within a given franchise area and into adjacent areas, have and will continue to be made voluntarily by operators in response to economic and public relations forces. Jurisdiction for mandatory (involuntary) extensions may be applied only to new franchises and renewals.

Discussion: The subject of mandating extensions either within the franchise area or to contiguous areas prompted considerable debate within the Committee.

Relating to extension of existing systems, the Committee opposes forced extensions into areas not specifically contemplated or required by the existing franchise. The Committee believes that in most cases an operator's failure to make an apparently feasible extension (i.e., to respond voluntarily to normal market forces) is evidence of economic and engineering problems faced in effecting extensions which were not contemplated when the system was originally designed. In this area there also appear to be valid legal concerns about modifications of existing contracts.

The Committee holds a different view in the case of new franchises where the franchisee has of his own free will accepted line extension requirements as an initial condition of doing business. In such cases we urge both the franchisee and the franchising authority to seriously think and plan the area's development pattern over the term of the franchise so that future engineering problems can be avoided. It would seem appropriate, and consistent with our views relating to the definitions of the franchise area for the franchising authority and franchisee to agree upon an expandable definition of the required service area including a clear statement of the condition under which extensions could be mandated.

For these purposes renewals can be viewed as new franchises, assuming * * * that a non-renewed operator who has faithfully performed his expired franchise is assured of realizing fair value for his property. Subject to this condition, as in the case of a new franchise, whatever requirements are imposed would be the result of an arms-length agreement.

Finally this position on renewals would tolerate the imposition of extension requirements on existing franchisees in the extraordinary cases where, by state action establishing an overriding public interest in receipt of cable service, all existing franchises were terminated and reissued.¹¹

70. In this regard, particularly in areas where there are pockets of population or growing suburban subdivisions, we would urge that franchising authorities in contiguous communities join together in planning for future cable development. We have seen several cases in which a new housing development was unable to get cable service because it was on the extreme edge of its community but the adjoining jurisdiction's cable system was readily available. A 'joint powers' agreement or other type of cooperative arrangement between the communities could easily solve these problems.

71. We are treating this subject in considerable detail because we consider it one of the most important factors in local and regional franchising. Service extension and the delineation of the franchise should be one of the primary concerns of local regulatory authorities. It has received too little attention in the past.

¹¹ See also Minority Comment, FSLAC Report Appendix A, which argues that state action may be the most appropriate or effective method of establishing nonconfiscatory required service extensions.

FRANCHISE LENGTH

72. Our rules limit the length of a new franchise to a maximum of 15 years (Section 76.31(a)(3)). This rule was prompted by the initial trend in franchising that led to extremely long (i.e., 99-year) franchises which afforded local authorities no opportunity to review and modify the franchise agreement if necessary. Lengthy franchise grants, we noted in our 1972 report, " * * * are an invitation to obsolescence in light of the momentum of cable technology" (par. 182). We also stated, in the reconsideration of cable television report and order, Para. 111, that there might be some instances where longer franchises are warranted and that we would entertain waiver requests in those cases. The FSLAC report recommends that this rule be changed in favor of a more flexible approach. They argue that, particularly in the larger cities, 15 years may not be sufficient time to develop and make profitable the advanced and complex broadband communications systems being contemplated. The Committee Report states:

" * * * It is our feeling that a fifteen year maximum period does not sufficiently deal with the difficulties of financing modern systems in cities of widely varying size. Accordingly we recommend that the maximum franchise period be redefined as a range of fifteen to twenty-five years, with specific periods within that range to be determined by individual franchising authorities. As an integral part of this recommendation provision should be made by the franchising authority for review at least every five years, commencing at most ten years after the franchise grant.

The central purpose of such reviews would be to consider such issues as system performance, design modifications, and the possible need for changes in franchise terms. Such reviews might result in alterations in the basic franchise, franchise extensions, and other possible changes in the agreements between the parties. In no case would such review periods preclude proceedings by the franchising authority at any time for termination of the franchise for cause."

73. The problem of minimum franchise terms has also been raised. In some cases, certificates of compliance are being sought for franchises with a one-year term. We question the advisability of this short a franchise duration. The capital costs and commitments involved in building a cable television system would seem to dictate against entrepreneurs accepting such short terms. We understand that in some states a year-to-year franchise is easier to secure than a term franchise necessitating a public referendum. However, such year-to-year franchises impose significant risks and increased administrative burdens. We intend to consider a rule imposing some minimum franchise term, possibly between 5 and 7 years, to remedy this problem.

74. We invite any interested party to submit comments on both the proposal made in the FSLAC report and our suggestion for a minimum term requirement as well as any other suggestions

for modifications of our rules on franchise duration. Of particular interest would be any cash flow figures supporting contentions for the need for longer franchise terms.¹²

FRANCHISE MODIFICATION AND RENEWAL

75. The entire subject of franchise duration, modification, renewal, expiration, and cancellation is one that is fraught with difficulties. First, a few points should be made to clarify our own filing requirements in this area. While we are considering proposals to change the duration rules (§ 76.31(a)(3)), the existing 15-year maximum will remain in effect. This maximum applies to both the initial grant and any renewals. A franchise calling for a 15-year term with a renewal option at the sole discretion of the franchisee does not comply with the rule. The franchisor must at least review, in a public proceeding, the performance of the system operator and the adequacy of the franchise as well as its consistency with our rules prior to renewal. This is not to say that any bid procedures are required or that any new franchise offering must be made, but simply that a public review of the franchise must be held with the opportunity for citizen input prior to renewal. In this regard, it should be noted that our rules, and the certificates of compliance we grant, are based in part on the franchises included in the application. The certificate does not apply to renewal franchises or to the terms of franchises significantly amended in any way, such as a change in termination date, service obligations,¹³ or franchise fees. Any such substantial change or renewal we consider to effectively terminate the existing franchise and that termination (or in effect the granting of a new franchise) requires recertification (or certification in the first instance on grandfathered franchises). An exception to this doctrine is a change in subscriber rates. Such a change is consistent with our rules so long as it is done in a public meeting and will not be considered to have terminated the existing, certified franchise.¹⁴

¹² Comments filed pursuant to this Notice of Rulemaking should be referred to Docket No. 20021.

¹³ The term "service obligation" or "service package" as used herein includes generally all requirements imposed on the franchisee relating to local origination or access programming, equipment, personnel, or any other purported obligations relating to programming or any other special benefits required for specified programmers or subscribers.

¹⁴ We, of course, are primarily concerned with changes that have some relationship to our rules. We are not including in this interpretation of when recertification is required changes in such areas as indemnity or bonding requirements, specific construction or safety alterations, reporting and enforcement procedures and the like. We recognize that the franchise is a "living" document and changes must be made from time to time to reflect current situations and practices.

76. The reason we are taking this approach to substantial changes in franchises should be obvious. Our entire program of certification would be meaningless if significant alterations, potentially contrary to our rules, could be made in a franchise after we had certified that it complied with federal regulations. Any substantial change in a franchise, of course, would automatically end any "grandfathering" rights regarding other provisions in the same franchise. Our "grandfather" of pre-March 31, 1972 franchises was meant to give franchising authorities a reasonable amount of time in which to bring their franchises into compliance. If they are now changing provisions in the franchises, they also have had ample opportunity to acquaint themselves with the new rules and will be expected to comply with all of our franchise requirements. In dealing with previously certified applicants, we will assume that they are operating pursuant to the already certified franchising during the certifying process for the new franchise.

FRANCHISE EXPIRATION AND CANCELLATION

77. In Reconsideration we expressed concern over situations where franchise renewal applicants threaten to terminate service to the public rather than reach an accord with the franchising authority. Once again, the comments in the FSLAC Report (Issue #10) are helpful by way of clarification:

*** [T]wo *** problems in this area *** bear mentioning. First, as the franchise term draws to a close with no assured renewal or fair compensation in sight, the cable operator acquires a strong disincentive to invest in needed new equipment that he cannot be certain of amortizing over the remaining term; the result, obviously, is a deterioration of service. Second, unfortunately, this situation has in the past created extreme and sometimes unwarranted pressures on franchise authorities and system operators to reach renewal agreements. Both these excessive pressures and the disincentive should be removed.

First, the Committee feels there should be no cancellation or expiration of the franchise without fair procedures and fair compensation. The existing franchisee should be given adequate notice and opportunity to be heard. Furthermore, we suggest that if the decision is adverse to the existing franchisee, the franchisor should have some provisions for an assignable obligation to acquire the system at a predetermined compensation formula. In the case of non-renewal this formula should call for payment of fair market value of the system as a going concern; whereas in the case of cancellation of the franchise for material breach of its terms, the compensation criterion might call for depreciated original cost with no value assigned to the franchise. In either case, the Committee would suggest that there be provision for impartial arbitration if the negotiators fail to agree on a price. The franchisor's obligation should be fully assignable to a successor franchisee selected by the franchisor.

It is also advisable, we believe, that there be a requirement that, during the reasonable interim period while transfer of the system is being arranged, the original franchisee be required to continue service to the public as a trustee for his successor in interest, sub-

ject to an accounting for net earnings or losses during the interim period.

All of these provisions should be included in the franchise itself so that the parties to the franchise know their respective rights and obligations and can plan their operations accordingly.

78. We think the Committee's advice is well taken. All the provisions mentioned are of utmost importance to the orderly process of renewal or transfer of system control. The public is directly and potentially severely affected if these provisions, or ones like them, are not contained in the franchise. We strongly suggest that all franchising authorities include such provisions.

79. Our concern in this area is so great, particularly as to guaranteed continuation of service to the public, that we are considering adopting rules requiring franchises to contain specific provisions and procedures relating to expiration, cancellation, and continuation of service. We invite all interested parties to comment on this proposal.¹⁵ Particular attention in the comments should be given to whether the rule should be a general one, simply requiring that franchises contain such provisions or whether the rules should be more specific as to the type of safeguards we should require to protect the public interest in this area. We would reiterate, however, that regardless of the outcome of this proceeding, franchising authorities would be wise to adopt the type of provisions discussed above. Too many instances have already come to our attention of threats to cut off service to the public.

TRANSFERS

80. In a related notice of rulemaking and inquiry, we would like to explore the difficult problem of transfers or assignments of control of franchises.¹⁶ At the moment we have no firm rules in this area and many questions have arisen. We note, for instance, that most new franchises require prior local approval before a transfer can take place. We assume that such approvals are given only after full public proceedings. We do not, however, require the inclusion of such provisions in the franchise at this time. Comments are invited on whether such requirements should be added to § 76.31 of our Rules.

81. Unfortunately, this is not as simple as it may appear. What, for instance, constitutes a transfer of control? If corporate ownership changes by acquisition, merger, etc., yet the local franchisee remains the same, should this trigger a public proceeding with all that entails? What effect would such an interpretation have on the ability of multiple system operators to consolidate, merge, etc., in the open market place? Should franchising authorities even be concerned with

¹⁵ Comments filed pursuant to this notice of proposed rulemaking should be referred to Docket No. 20022.

¹⁶ Comments filed pursuant to this notice of proposed rulemaking and inquiry should be referred to Docket No. 20023.

this type of "transfer" so long as the negotiated terms of their franchise are enforceable? Clearly it is time for us to inquire into these areas and adopt appropriate regulations to deal with them where necessary.

82. A question has been raised as to whether franchise transfers constitute a "significant change" so as to require recertification. At the moment, they do not. It would seem that so long as the franchise terms comply with our rules and the franchise is so certified, it is unnecessary for us to require recertification of the same document. The selection of the franchise holder is, after all, a local matter under our rules.

83. While we do not consider recertification necessary because the terms of operation in a simple transfer or assignment remain the same, we are considering adding a provision to our filing requirements for the submission of a new Form 325 for any transferred system. Such a rule would assure us that our files are always updated on transfers of ownership as soon as they occur. When we receive this information, it would be checked for compliance with our cross-ownership rules. A statement of such compliance accompanying the submission might also be required. Comments on this proposal or any other recommendations on dealing with the complex problems involved with transfers of control as well as franchise expiration, cancellation, and termination are invited. The discussion of these problems above should put all parties on notice that we consider this a particularly difficult area that requires careful study and perhaps additional regulation.

SUBSCRIBER RATE REGULATION

84. In § 76.31(a)(4) we require that cable systems, in order to receive a certificate of compliance, must have a franchise providing for franchisor approval of initial charges for installation and regular subscriber service. We have intentionally and specifically limited rate regulation responsibilities to the area of regular subscriber service, and we will continue to do so. We have defined "regular subscriber service" as that service regularly provided to all subscribers. This would include all broadcast signal carriage and all our required access channels including origination programming. It does not include specialized programming for which a per-program or per-channel charge is made. The purpose of this rule was to clearly focus the regulatory responsibility for regular subscriber rates. It was not meant to promote rate regulation of any other kind.

85. After considerable study of the emerging cable industry and its prospects for introducing new and innovative communications services, we have concluded that, at this time, there should be no regulation of rates for such services at all by any governmental level. Attempting to impose rate regulation on specialized services that have not yet developed would not only be premature but would in all likelihood have a chilling effect on the anticipated develop-

ment. This is precisely what we are trying to avoid. The same logic applies to all other areas of rate regulation in cable, i.e., advertising, pay services, digital services, alarm systems, two way experiments, etc. No one has any firm idea of how any of these services will develop or how much they will cost. Hence, for now we are preempting the field and have decided not to impose restrictive regulations. Of course, at such time as clear trends develop and if we find that the free market place does not adequately protect the public interest, we will act, but not until then.

SUBSCRIBER COMPLAINTS

86. Assuring that subscribers receive quality service and quick resolution of any complaints is one of the most important regulatory functions to be performed at all levels of government. The primary locus of responsibility, however, must be at the local level, where the service is. For this reason we stated in § 76.31(a)(5) that specific procedures for the resolution of subscriber complaints shall be included in the franchise and that there shall be a local business office or agent available to subscribers to remedy complaints. Many franchises are now being reviewed which have full statements of the franchisee's obligations to resolve subscriber complaints but no indication whether the franchisor has any responsibilities. We wish to make it clear, therefore, that this obligation was meant to cover both parties.

87. If no specific franchise statement indicates with whom or where to register complaints at the local level and what will be done with them once received, the public is not well served. The result of this information gap to subscribers is that local complaints often are sent to this Commission.¹⁷ We, in turn, inform the correspondent that his complaint is within the purview of local not federal officials, and he should contact them. Much time and effort is thus wasted.

88. In order to fully comply with § 76.31(a)(5), therefore, we expect that franchising authorities from this point on will include specific provisions in the franchise on what government official will be directly responsible for receiving and acting upon subscriber complaints.¹⁸ We would also urge that this information along with the specified procedure for reporting trouble to the cable operator be given to all subscribers as they are hooked into the system. Some communities have required that a card with this information on it be given to each new subscriber. It seems to have worked

¹⁷ This Commission has established a subscriber complaint service to aid the public. Its efforts are primarily aimed at clearing up misunderstandings between subscribers and systems with regard to our rules and the informal resolution of complaints.

¹⁸ We propose changing our rules to make this requirement clear. Any interested party may file comments on this notice of proposed rulemaking. Comments on this subject should be referred to Docket No. 20024.

well, and we would encourage adoption of this approach.

89. Some questions have been raised regarding the meaning of our requirement for a "local" business office. In most cases, this is a clear requirement. A system serving one city should have a business office or other means in that community to receive and act on subscriber complaints. However, we will be flexible in the interpretation of this rule as it relates to a single head-end multi-community system or a "county" system. The operator of a single-plant multi-community system need not have a business office in each of the communities served so long as subscribers can call a local telephone number to register complaints and personnel are available to act on those complaints. On the other hand, we will not accept a situation where there is only one business office in a large county necessitating long-distance telephone calls for some subscribers to register their complaints.

FRANCHISE CONSISTENCY

90. As we have said throughout the period of developing these rules for cable television, the process is evolutionary. We expect to continue to modify, clarify, add, or eliminate provisions as the need arises. We intend to remain flexible in this regard and franchising authorities should be on notice that this is the case. For this reason, we included the requirement § 76.31(a)(6) that a franchise should specifically contain provisions allowing for amendments to comply with our rules. Unfortunately, although this rule appears to be clear on its face, many franchises have not included such a provision. It should be understood that any required modifications would have to be made even where a franchise does not specifically state that it is amendable to comply with our changes within one year. However, we would prefer a clear statement in the franchise to that effect to make sure all parties are aware of the possible need for modifications.

FRANCHISE FEES

91. In § 76.31(b) a limitation is imposed on the franchise fee deemed acceptable in an application for a certificate of compliance. Many questions have been raised about the perimeters of this limitation (see, e.g., FSLAC final report (Appendix B) "memorandum regarding clarification of § 76.31(b) and related matters" and the associated minority opinion.)

92. The purpose of the limitation we imposed was clearly stated in the Cable Television Report and Order:

*** We are seeking to strike a balance that permits the achievement of federal goals and at the same time allows adequate revenues to defray the costs of local regulation.

We have found no reason to change our position on this matter. The use of the franchise fee mechanism as a revenue raising device frustrates our efforts at developing a nationwide broadband

communications grid. Excessive fees or other demands in effect create an obstruction to interstate commerce which must be avoided.

93. The figure of three percent of gross subscriber revenues seems to more than adequately compensate the average franchising authority for actual regulatory costs. We have provided a waiver mechanism for fees up to five percent of gross subscriber revenues in those cases where an unusual or experimental regulatory program is proposed that can be shown to need the extra revenue.

94. Because of the many questions raised regarding this rule we will review the reasoning, intent, and scope of § 76.31(b) as it relates to the rest of our rules. First, some definitions appear necessary.

"GROSS SUBSCRIBER REVENUES"

95. The term "gross subscriber revenues" is meant to include only those revenues derived from the supplying of regular subscriber service, that is, the installation fees, disconnect and reconnect fees, and fees for regular cable benefits including the transmission of broadcast signals and access and origination channels if any. It does not include revenues derived from per-program or per-channel charges, leased channel revenues, advertising revenues, or any other income derived from the system.

FEES FROM AUXILIARY SERVICES

96. We recognize that the income derived from auxiliary cable services may at some future time constitute the bulk of a cable system's receipts. We have no intention of depriving the franchising authority of a reasonable percentage of those receipts at that time. But for now, the monies derived from ancillary services are best used to support the development of those experimental and largely unprofitable services. We encourage experimentation in ancillary services. Any funds that can be freed to support those services will ultimately benefit the community of the system and aid our efforts at seeing these services develop nationwide.

97. Because we are presently imposing a "gross subscriber revenues" limit on franchise fees which may, at some future date, be lifted, we suggest that franchising authorities write their franchise fee provision flexibly, that is, using a "gross subscriber revenues" base for now but including a provision for the base to change to "gross revenues" automatically in the event that this Commission changes its rules.

98. There have been several cases where a franchise fee was based on something other than gross subscriber revenues. Generally, such instances arise when the fee is based on a specific monetary figure per year per subscriber. In those cases, the percentage is figured based on the subscriber rate and an average penetration estimate. Regardless of how the fee is stated, however, we will attempt to translate the fee into a percentage of gross subscriber revenues to

see if it reasonably complies with our rules.

STATE AND LOCAL FEES

99. It should be noted that we include all non-Federal regulatory fees in our limitation. The purposes stated in the *Report and Order* would clearly be circumvented if we interpreted the rule otherwise. Our concern that " * * * high local regulatory fees may burden cable television to the extent that it will be unable to carry out its part in our national communications policy * * * " (Para. 185) is just as valid if the burdensome fees are imposed by a combination of local authorities. Accordingly, both local franchise fees and state fees, if any, will be added together to determine compliance with our fee limitations.

100. Another related problem has recently been brought to our attention in this area of fees. Several jurisdictions are now attempting to impose a "use tax" as well as a fee for cable television service. It would appear that such a tax, particularly when its purpose is described as general revenue raising, results in the same potential harm we are attempting to avoid by imposing a franchise fee limitation. While the particular cases before us (CSR-479, Stockton, Cal., and CSR-499, State of Florida) will be dealt with in separate actions, we think it is necessary to express our concern about this development. The burdens and obstructions to the growth of a viable nationwide communications grid remain the same whether imposed via a fee or a tax mechanism.

FRANCHISE FEE WAIVERS

101. As we noted earlier and made clear in the report and order, waiver of the three percent ceiling is available. Indeed, even our rules indicate that up to five percent could be considered a reasonable fee depending on specific showings. Many have asked what exactly need be shown to allow a fee between three and five percent.

102. While each case, of necessity, is different and must be handled on an individual basis, some general guidelines can be given. The bulk of the regulatory burden at the local level comes in the first few years of cable development. The creation of a cable ordinance and the granting of a franchise as well as supervision of construction all occur in this period. Aside from normal franchise enforcement and review, very little actual regulation on a day-to-day basis goes on after this initial surge of activity. The number of franchises now being adopted with our fee limitation intact indicates that three percent of gross subscriber revenues does cover these costs.

103. It is the rare case where a more comprehensive regulatory program is contemplated that extra fees might be justified. Such programs are usually in the larger markets or where experimental applications of cable are being attempted. In these cases, we recognize that our three percent fee limit might not cover the costs incurred. Where it can be shown that the three percent

figure will not be adequate and that the specific contemplated costs of the specific regulatory program require extra input in the form of fees up to five percent of gross subscriber revenues, we will entertain waiver requests.

104. Petitions to justify fees in excess of three percent should include both a full description of the special regulatory program contemplated and a full accounting of estimated costs. Such petitions should also contain information on the estimated subscriber penetration and the derived figures on revenue anticipated from the franchise fee. It is only with a complete showing of this nature that we can realistically determine if the extra fee request is justified and that it will not adversely affect the operator's ability to accomplish federal objectives.

105. The recitation of the normal obligations to oversee a franchisee assumed by the local authority is not sufficient to warrant extra fees. Justifications that simply allocate a portion of the time and salary of various city officials to cable regulation without a full explanation of the special regulatory program to be carried out will also not be considered sufficient. Such an allocation, without amplification, would only confirm that the fee is being used to augment the general treasury as a revenue raising device.¹⁰

106. The reason we have allowed for extra fees despite our concern over the possible strain such fees impose on our nationwide program is to maintain flexibility. In those cases where a special office of telecommunications (such as in New York City) is warranted by unique circumstances or special personnel is hired to handle cable television regulation and complaints, the new costs could in part be covered by the higher franchise fee. Very few situations of this type have come to our attention.

LUMP SUM PAYMENTS

107. Included in our fee limitation is a notation on lump sum payments or payments-in-kind. It is important that everyone understand the ramifications of this notation. Were we to allow a large initial lump sum payment for securing the franchise it would negate the effort we have made to limit the franchise fee. Bidding contests would continue unabated. The public would be the ultimate loser since the franchising authorities and bidders would focus on bidding rather than how and by whom the best service can be provided to the community. We therefore include any lump sum payments in our injunction on the ultimate size and effect of the fee. Such payments are amortized over the term of the franchise to determine their effect on the percentage figure. One exception to this method is stated consulting fees and expenses incurred in the granting or renewal of the franchise. If these fees

¹⁰ We note that the Report to the President by the Cabinet Committee on Cable Communications (1974) has adopted our view against the use of cable franchise fees for such purposes. Recommendation 9(c).

are not excessive and can be shown as direct costs to the franchising authority, we think they should be recoverable from the ultimate franchisee or from all franchise applicants as has been done in some cases. It is not unusual for the franchising authority to spend several thousand dollars for an independent survey or consultant to aid in developing the cable ordinance. So long as these expenses do not become a new form of bidding we will not include them in our calculation of franchise fees. A specific showing of the expenses, however, should be made. Ideally, the expenses should be calculated and set prior to franchise bidding and the established costs either allocated among the bidders or applicable to any franchisee. Of course, we will continue to watch such charges for any evidence of abuse.

EXTRA SERVICE PACKAGE REQUIREMENTS

108. Another area that we closely monitor in relation to the franchise fee is the rather all-encompassing problem of "extra services". This has included everything from the free wiring of entire school systems to the building of television studios attached to the local high school, extra free channels, fees for access groups, and even free television sets for city officials. This is a very difficult problem to deal with, as can be seen from the Federal/State-Local Advisory Committee's rather lengthy discussion of the topic, *supra*. It is precisely because these "extra services" take such diverse forms that specific guidelines are almost impossible to enunciate. We will attempt to discuss some of the more commonly requested extra services and their relationship to our overall policy. In that way we would hope that franchisors and applicants can be more sensitive and responsive to the problems we see developing.

109. In many if not most franchises, the franchisee is required to install one free "tap" or "drop" in each local school and often in every other government building (city hall, firehouse, etc.). We have no objection to such a provision. In a few instances, however, the free extra service has been much greater. Some franchisees have required the cable operator, for instance, to wire each room in all the local public schools. This in essence requires the operator to internally wire the school system free of charge. Such an expense can be considerable, especially when several hundred rooms might be involved. The cost of equipment and materials alone could amount to more than the revenue derived from the franchise fee. It is this sort of indirect "payment-in-kind" that we are watching very closely and will not allow without justification. This type of expense is just as real and has just as much of an effect on the franchisee as a simple fee. All parties must begin to recognize that when such costs are incurred they of necessity often become trade-offs on service provided elsewhere to the community at large. In this example we merely have the cable operator subsidizing the school system. That is not his function.

110. A trend seems to be developing where franchising authorities specify in the franchise the production equipment to be made available. Some franchisees have become so technical that they even include the model numbers of particular microphones and cables. While such "service package" requirements are not prohibited by our rules, we do not think it is a particularly good idea. Technology in the area of low-cost video production equipment is advancing so rapidly that such specifications are likely to be an invitation to planned obsolescence. We only repeat, in this regard, that origination and access will not work because of anything written in a franchise. It is far more important for the franchising authority to assure itself of the character, responsiveness, and interest of the potential operator than it is to write strict franchise provisions in this area. The mere requiring of specific cameras and equipment will not guarantee successful community access. Real commitment and interest cannot be required in any legal document.

111. As was noted earlier, if the franchising authority wishes to specify the service package it expects from the operator in the franchise, we will not stop it from doing so. Reasonable service offerings can and are being made in the franchising process. Both franchising authorities and franchise applicants must recognize, however, that any specification of services will reflect on the costs of the over-all service to the community. Excessive service demands or offers will affect the viability of the system. Cable operators must learn that accepting such demands simply to secure a franchise may not be in their or the cities best interest. Similarly, franchise authorities must be cautious in accepting high priced extra service offerings on the basis of bid procedures. The net effect of some superficially attractive offerings might be a basic system that does not find it possible economically to serve the community properly.

112. It has been our policy to date to view any service package requirements in relation to our franchise fee limitation. We plan to relax this approach experimentally. The service package—so long as it is directly related to services and equipment which can potentially benefit all cable users—will now be treated as a contractual question and, so long as the package is not clearly excessive, solely up to the discretion of the franchisor and franchisee.²⁰ We wish to emphasize, however, that we are relaxing the effect of our rules experimentally. Any evidence that cable operators or franchisors are using this relaxation to return to the damaging process of simple "bidding contests" will result in the immediate reinstatement of our former procedures.

²⁰ In this context we are discussing "service packages" only as they relate to equipment, personnel, etc. This does not include pre-empted services such as extra channels, origination programming, etc.

113. It should be noted that we are making a distinction on what will or will not be viewed as part of the franchise fee "payment-in-kind" limitation. Required extra services that benefit only one group of special users is still considered a type of cross-subsidy that will be viewed in relation to the franchise fee. As an example, the operator being required to wire the entire local school system for closed circuit cable use would still be considered payment-in-kind. Specific equipment or personnel requirements where the benefits are available to all cable users would not.

114. Our purpose, in part, in imposing a franchise fee or payment-in-kind limitation was to prevent the siphoning of the limited available capital for cable development for other uses, thereby threatening the success of our overall national goals. We intend to maintain that limitation. Reasonable service requirements that directly benefit cable development and use by all parties is compatible with that purpose.

115. Another reason for this adjustment in our review policy is that the complexities involved in any service package offering and the innumerable variations result in an ad hoc administrative process that cannot be effectively carried out with any consistency. We are, however, sensitive to our obligation to insure that abuses do not arise that will threaten our nationwide program. For this reason, we expect to issue a Notice of Proposed Rulemaking in the near future that will suggest revisions in our filing and reporting procedures so that we can get more specific data on the costs of special service packages.

116. The information we will be seeking is also information that any responsible franchising authority should demand prior to accepting any applicant's proposal, i.e., what are the expected expenses involved in the service offering; how will those expenses contribute to the quality of cable services in the community; what will be the effect of those expenses on the financial viability of the system, etc.

117. We will no longer attempt to "second guess" the franchising authority on the answers to those types of questions. It is hoped that all parties will realize that decisions made in the area of required services may well have a major impact on the development of cable in any particular locale. We will, however, continue to monitor such agreements. If we find that serious abuses are arising that could effect our national goals we stand ready to re-establish procedures to remedy the problem.

118. Once again, it should be emphasized that the flexibility we are encouraging in service packages is restricted to services, equipment or personnel available to all cable users. Proposals that would benefit only one class of cable users would not be acceptable. Studios, equipment, or mobile vans designated for use or given specifically to one group such as the educational authority or a public access group would not be reasonable.

Such equipment, etc., must inure to the benefit of all users, including the cable operator, for his own origination programming, if any. As was explained in detail earlier in this document, guidelines, and procedures for waivers will remain in force regarding channel capacity, extra access channel demands, etc.

USE OF FEES FOR OTHER PURPOSES

119. In yet another area where the franchise fee limitation has come into question, we have received many inquiries regarding the use of the fee for purposes other than to defray regulatory costs. Proposals have been made, for instance, to use a portion of the franchise fee to pay for access programming or to aid local educational broadcast facilities. As a general rule we have stated that the franchise fee should be based on regulatory costs. It should not be used for revenue raising purposes. We continue to hold this position at this time.

120. As with most of our other regulations in this field, we intend to maintain flexibility. We will entertain waiver requests for the use of franchise fees for non-regulatory purposes. Such requests, however, must be very specific. Information on how the funds will be used, distributed, and accounted for must be included. A showing that the proposed use of the fee is consistent with our regulatory program and will benefit the development of a broadband communications system will also be necessary. In carefully reviewed cases where a specific experimental program designed for a particular community is presented we will consider granting waivers of our rules. Generally speaking the use of these "extra" fees will be limited to the same maximum now imposed for regulatory purposes, five percent of gross subscribed revenues. In most cases that have come to our atten-

tion the special uses fees are limited to the two percent "pad" between three and five percent. It is unlikely that we will allow waivers for any proposal that exceeds a total of five percent for regulatory and non-regulatory purposes.

121. Proposals to use the two percent "pad" in the franchise fee rules for public access purposes pose several significant problems for us. While we recognize the need for additional funding for access, there are serious difficulties, we feel, with governmental funding of programming. These difficulties exist regardless of the mechanism for distribution. We intend to issue a separate document shortly that will address this specific issue.

CONCLUSION

122. In summation, on the question of franchise fees and extra services or other obligations, we intend to be vigilant and monitor any such requirements thoroughly to assure that no undue burdens are being imposed that would result in a diminution of the overall goals we have set for cable television. Reasonability is the keynote to any such program, and we will remain flexible and open to any thoroughly considered proposals. Our rules and the service requirements we impose on cable operators are intended to provide a solid base for the development of a nationwide means of broadband communications. In most instances, no more is required or, indeed, desirable at this time. It is unreasonable to expect an infant industry to be able to start where we all hope it will eventually end—as a truly new and innovative highly complex broadband network. It must be allowed to grow in stages or it will be killed by overexpectation and excessive demands.

123. The clarifications and guidance we have provided in this document will hopefully aid all parties in our effort to

develop responsive and flexible regulations for an emerging industry. The announcement of several new rule making inquiries herein is yet another testimonial to the fact that we intend to continue to investigate, clarify, modify or change our regulations as the situation warrants. The regulatory concepts we have adopted are new and many of our rules are experimental. We welcome any supported recommendations aimed at improving them.

124. Authority for the rule makings proposed herein is contained in sections 4(i), 303, and 403 of the Communications Act of 1934, as amended. All interested parties are invited to file written comments on these rule making proposals on or before June 7, 1974, and reply comments on or before June 21, 1974. Please note that separate docket numbers have been assigned to individual rulemaking inquiries initiated herein. Comments should also be filed separately. In reaching a decision on these matters, the Commission may take into account any other relevant information before it, in addition to the comments invited by this Notice.

125. In accordance with the provisions of § 1.419 of the Commission's rules and regulations, an original and 14 copies of all comments, replies, pleadings, briefs or other documents filed in this proceeding, shall be furnished to the Commission. Responses will be available for public inspection during regular business hours in the Commission Public Reference Room at its Headquarters in Washington, D.C.

Adopted: April 15, 1974.

Released: April 17, 1974.

FEDERAL COMMUNICATIONS
COMMISSION

[SEAL] VINCENT J. MULLINS,
Secretary.

[FR Doc. 74-9141 Filed 4-19-74; 8:45 am]

federal register

MONDAY, APRIL 22, 1974
WASHINGTON, D.C.

Volume 39 ■ Number 78

PART III



Housing and Urban Development Department

■

LOW RENT PUBLIC HOUSING

Section 23 Housing Assistance
Payments Program—New Construction

Title 24—Housing and Urban Development
CHAPTER VIII—LOW RENT PUBLIC HOUSING, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. R-74-248]

PART 1272—SECTION 23 HOUSING ASSISTANCE PAYMENTS PROGRAM—NEW CONSTRUCTION

Notice was given on January 22, 1974 at 39 FR 2534 that the Department of Housing and Urban Development was proposing to amend Title 24 of the Code of Federal Regulations by adding a new Part 1272 to Chapter VIII.

The purpose of Part 1272 is to set forth the essential elements of the Section 23 Housing Assistance Payments Program—New Construction, including, among other things, the roles and responsibilities of the Department, the local housing authority (LHA), the owner/developer, and the eligible low-income family; the steps in applying for the Section 23 New Construction Program; the basis for determining the amount of housing assistance payments; and the prescribed form of contracts and other documents.

The Department has received more than 170 responses to the January 22, 1974 publication. All of these comments were seriously considered and many changes have been incorporated in these regulations as a result. The principal changes are set forth below.

The subject of the greatest number of comments was the priority to be given to applications limiting assistance to 20 percent of the units in a multifamily structure or complex. Accordingly, the changes with respect to this subject are discussed first. The remaining principal changes are discussed generally in the order in which they appear in the regulations.

1. Section 1272.103(k)(2), which sets forth the priority for LHA applications limiting assistance to 20 percent of the units in a single multifamily structure or complex of five or more units, has been modified so that applications for (a) elderly or handicapped housing and (b) programs of 25 or fewer units shall be considered without regard to the priority. Also, the procedures relating to the application of the 20 percent priority in the evaluation and selection process have been set forth in a new § 1272.203 (b). A new § 1272.204(a) allows LHAs with applications approved as meeting the 20 percent requirement to select and contract with a developer for such projects on a negotiated basis without advertising for proposals.

2. Section 1272.103(e), which sets forth the limitations on maximum rents which owners may charge, has been clarified and expanded by, among other things, adding a new § 1272.103(e)(2) respecting maximum rent limitations for projects financed with HUD-insured mortgages.

3. The provisions limiting housing assistance payments to units under lease to eligible families, § 1272.103(d)(2) and section 3 of the Housing Assistance Payments Contract (Contract), Appendix

XII have been modified to (a) require an owner, in order to continue to receive housing assistance payments with respect to units vacated by eligible families in violation of their leases, immediately upon learning of any such vacancy to take all feasible action to fill such units, and (b) provide for payments with respect to units not under lease where such vacancy is due to the LHA's failure to make timely determinations as to the eligibility of families selected by the owner.

4. Section 1272.103(g) and section 6 of the Contract, relating to rent adjustments have been modified so that: (a) The provision respecting automatic adjustment of rents at the execution of the Contract has been deleted, so that the initial rents will be as agreed at the execution of the Agreement to Enter into Housing Assistance Payments Contract (Agreement), Appendix XI. However, the fair market rent, as determined by HUD, will be adjusted in order to allow for the period of construction; (b) rents for projects financed with HUD-insured mortgages may in no case exceed the rent formula rents established by HUD in connection with the mortgage insurance for such projects; (c) automatic annual rent adjustments are limited only by the percentage of change in the fair market rent for existing housing and by the rent formula rents where applicable; (d) the Secretary may grant special additional adjustments for substantial, general increases in property taxes and/or utility rates which are not adequately compensated for by automatic annual adjustments; (e) renegotiated rents (which may exceed rents permitted by automatic and special adjustments) must be approved by HUD, must be clearly supported by financial statements, and are to reflect reasonable amounts for operation and return on investment in comparison with comparable rental projects of the same age. Any increases in the amount of housing assistance payments as a result of adjustments or renegotiation are still limited to the maximum total amount of annual contributions provided in the Annual Contributions Contract (ACC), Appendix X, for purposes of housing assistance payments.

5. The provisions respecting relocation have been modified and clarified so that: (1) Pursuant to § 1272.208(a)(5), the owner must provide in his proposal, among other things, an estimate of relocation costs (if any) for his proposed project, and (2) pursuant to §§ 1272.103 (1), 1272.209(d) and section 7 of the Agreement, the owner of a project to be constructed on a site which has occupants will not be required to undertake liability for and provide funding for relocation costs if other commitments, satisfactory to HUD, have been made for the funding of such costs.

6. Section 1272.103(n), which sets forth the methods of financing permitted for the New Construction Program, has been clarified and the following types of financing have been added: (1) Market-rate HUD-insured mortgage loans under sections 220 and 221(d)(3) of the National Housing Act (use of mortgage insurance under section 221(d)(3) is limited to nonprofit sponsors); (2) section 515 of the Housing Act of 1949, administered by the Farmers Home Administration (provided that a family receiving the benefit of section 23 housing assistance payments may not also receive the benefit of interest reduction payments); (3) financing by bonds or other obligations of eligible state housing or development agencies. Types of financing which may not be utilized in the section 23 program are also now enumerated, including financing by an organization which has an identity of interest with the LHA.

7. The procedures with respect to the payment by the LHA of security deposits on behalf of eligible families, as set forth in § 1272.103(o), have been clarified and a prescribed form of Security Deposit Agreement, Appendix XVI, has been provided which sets forth the procedures including the terms of and procedures for repayment to the LHA.

8. A new § 1272.105 has been added which sets forth the procedures for the submission by the LHA to HUD on the prescribed forms of (1) an Initial Estimate of Required Annual Contributions (Preliminary Costs), which includes estimates of costs of administration and of nonexpendable equipment up to the beginning of the first fiscal year and of the required amount for the funding of security and utility deposits and (2) Annual Estimates of Required Annual Contributions, covering estimated amounts for housing assistance payments and for the allowance for the cost of administration.

9. A new § 1272.201(b) has been added to provide for a preapplication conference between the LHA and HUD so that HUD may assist the LHA in the preparation of its application.

10. Section 1272.205 has been modified to clarify and expand the contents of the Developer's Packet.

11. Sections 1272.207 and 1272.211 modify the procedures respecting the submission and review of developers' proposals. These modified procedures provide for proposal submission to and review by the LHA, and for HUD review of the proposals selected by the LHA. The LHA is required pursuant to a modified § 1272.211(b), to (a) utilize a prescribed LHA Review Checklist, Appendix VI, in its review and (b) select the proposal with the lowest gross rents, but taking into account its evaluation of all other pertinent factors. If the proposal with the lowest rent is not selected, the LHA must submit a justification to HUD for selecting another proposal.

12. The requirements with respect to management capability and responsibilities of owners have been clarified and strengthened so that (a) pursuant to § 1272.208(a)(8), the owner is required to include in his proposal evidence of management capability and his proposed management program, pursuant to a prescribed Management Capability and Proposed Management Program form, Appendix V, and (b) pursuant to new § 1272.216(a), the owner is required to certify, prior to execution of the Housing Assistance Payments Contract, that

the management program to be utilized will be the one approved in his proposal unless both HUD and the LHA have approved revisions.

13. The following provisions respecting site selection have been added: (a) A new § 1272.209(e), which sets forth flood insurance requirements pursuant to the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973 (which requirements are also set forth in section 13 of the Contract); and (b) a new § 1272.210 which generally prohibits the use of preselected sites (e.g., sites designated by the LHA for development of section 23 housing held under options transferrable to a selected developer) unless specifically approved by the Assistant Secretary for Housing Production and Mortgage Credit-FHA Commissioner.

14. A new § 1272.211(a) provides that: (a) Any proposal from an owner having an identity of interest with the LHA or (b) any arrangement with a management agent having such an identity of interest shall not be eligible for consideration.

15. § 1272.215, which sets forth the procedures for inspection and acceptance of projects, has been modified to: (a) Provide for joint inspection by HUD and the LHA upon notification of completion by the owner; (b) provide for advisory arbitration, at the owner's expense, if he disputes disapproval by HUD of the project; (c) permit acceptance of a project subject to the completion of ordinary punchlist items provided that the owner makes an escrow deposit to cover such items and provided that the Contract is subject to termination if the work is not completed within a reasonable time.

16. A new § 1272.217 clarifies and expands the policies and procedures regarding the operation of New Construction projects. The new provisions cover, among other things, Equal Opportunity requirements and LHA admission regulations; selection and LHA approval of families for admission and continued occupancy; requirements of and approval procedures for owner-family leases.

17. The procedures with respect to the selection and certification of families have been clarified and modified so that: (a) Owners are required, pursuant to § 1272.217(a) and section 5(a) of the Agreement, to commence selection at least 90 days prior to project completion so as to facilitate expeditious leasing; (b) § 1272.217(c), section 5(b) of the Agreement and section 9(a) of the Contract provide that owners are responsible for selecting families, subject to LHA certification of eligibility; (c) the LHA is required, pursuant to § 1272.217(d), section 5(c) of the Agreement, and section 9(b) of the Contract to make eligibility determinations for families submitted by the owner within a specified time; and (d) a new Determination of Family Eligibility and Lease Approval form, Appendix XIII, has been provided to simplify and expedite the selection of families and LHA approval of families, leases and dwelling units. This form includes a simplified Certificate of Family

Participation (which has been retitled from Certificate of Family Eligibility).

18. A new § 1272.217(h) and a new section 16 of the Contract provides for a system of reducing the number of units under Contract if the owner fails to keep such units under lease to eligible families in accordance with that provision.

19. The revised regulations now provide, pursuant to section 1.3(c) of Part I of the ACC and a new § 1272.103(c) (2), for the establishment of an account to which may be credited amounts determined by HUD to be necessary to assure that the low-rent character of the project will be maintained. Amounts may be paid out of this account, as approved by HUD, during the term of the ACC for increases reflected in the annual estimates of required annual contributions.

20. The Agreement and the Contract now include suitable provisions for those cases in which it is agreed that a project should be completed and accepted for occupancy in stages.

21. Provisions respecting the owner-family lease have been modified so that: (a) pursuant to section 15 of the Contract, certain required lease provisions have been modified or deleted in the interests of simplification and clarity, and (b) pursuant to section 4 and 15 of the Contract, the items of service, maintenance and security included in the Contract and the lease are tailored to those specified in the owner's approved proposal.

22. Section 14 and 15 (required lease provisions) of the Contract, which relate to eviction of eligible families, have been modified so that: (1) The owner may not evict any family unless the owner complies with the requirements of local law, the lease and the Contract eviction provision; (2) the owner must notify the family (copy to LHA) of the proposed eviction, stating the grounds and advising the family that it has 10 days (from receipt of notice) to respond to the owner and/or present objections to the LHA (in writing or in person); (3) the LHA shall authorize the eviction unless the grounds are insufficient under the lease; and (4) the LHA shall notify the owner and the family of its determination within 20 days of the date notice is received by the family.

23. The requirements and procedures respecting Equal Opportunity have been clarified and strengthened in the ACC, Agreement and Contract, including provisions requiring cooperation of the owner and LHA in compliance reviews and complaint investigations undertaken by the Government.

24. The numbering scheme of the regulations has been modified slightly in order to conform, to the extent possible, referencing in this regulation to that utilized in the corresponding HUD section 23 New Construction Handbook. Under the revised numbering, the initial section in Subpart A is designated §-1272.-101 and the initial section in Subpart B is designated as § 1272.201. These references correspond to Handbook paragraphs 1-1 and 2-1, respectively.

The Assistant Secretary for Housing Production and Mortgage Credit-FHA Commissioner has determined that the public interest would best be served by making these regulations effective immediately to avoid unnecessary delay in its implementation. Therefore, the Assistant Secretary finds that good cause exists for making these regulations effective upon publication in the FEDERAL REGISTER.

Effective date. These regulations shall become effective April 22, 1974.

Accordingly, Title 24 is amended as follows:

A new Part 1272, Section 23 Housing Assistance Payments Program—New Construction, is added to Chapter VIII to read as set forth hereinafter.

Subpart A—Applicability, Scope, and Basic Policies

Sec.	
1272.101	Applicability and scope.
1272.102	Definitions.
1272.103	Basic policies.
1272.104	Separate project requirements.
1272.105	Submission of estimates of required annual contributions.

Subpart B—Project Development and Operation

1272.201	Preapplication.
1272.202	Submission of application.
1272.203	HUD review and approval of application.
1272.204	Development procedures.
1272.205	Preparation and contents of developer's packet.
1272.206	Invitation for proposals.
1272.207	Submission of proposals.
1272.208	Proposal contents.
1272.209	Site and neighborhood standards.
1272.210	Prohibition of use of preselected sites.
1272.211	Evaluation of proposals.
1272.212	Notification of developer selection.
1272.213	Annual contributions contract.
1272.214	Agreement to enter into housing assistance payments contract.
1272.215	Project completion.
1272.216	Execution of housing assistance payments contract.
1272.217	Project operation.
1272.218	HUD review of contract compliance.
1272.219	LHA reporting requirements, [Reserved]

APPENDICES:

[Appendices I, II, III, VII, IX, XIV, XV, XVII, XVIII, XIX, and XX, which relate to internal HUD processing procedures, are not included herein, but do appear in the HUD New Construction Handbook]

Appendix IV: New Construction—Invitation for Proposals.

Appendix V: Management Capability and Proposed Management Program.

Appendix VI: LHA Review Checklist for Section 23 New Construction Proposals.

Appendix VIII: Notification of Developer Selection.

Appendix X: Annual Contributions Contract.

Appendix XI: Agreement to Enter Into Housing Assistance Payments Contract.

Appendix XII: Housing Assistance Payments Contract.

Appendix XIII: Determination of Family Eligibility and Lease Approval.

Appendix XVI: Security Deposit Agreement.

AUTHORITY: Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)); sec. 10(b) of the U.S. Housing Act of 1937 (42 U.S.C. 1410(b)); sec. 23 of the U.S. Housing Act of 1937 (42 U.S.C. 1421(b)).

Subpart A—Applicability, Scope, and Basic Policies

§ 1272.101 Applicability and scope.

(a) The policies and procedures contained herein are applicable to the making of housing assistance payments on behalf of eligible low-income families leasing newly constructed housing developed under the new construction method pursuant to the provisions of section 23 of the U.S. Housing Act of 1937.

(b) For the purposes of this part, "new construction" shall mean newly constructed housing for which, prior to the start of construction: (1) An Annual Contributions Contract (ACC) is executed between the Department of Housing and Urban Development (HUD) and the Local Housing Authority (LHA); and (2) an Agreement to Enter Into Housing Assistance Payments Contract ("Agreement") is executed between the LHA and the owner, except that developers of housing already under construction are eligible for participation in this program, provided that all requirements of the program can be met. Unless specific approval is obtained from HUD, the policies and procedures contained herein shall apply to all new construction projects for which ACCs have not yet been executed. With respect to projects under executed ACCs, these standards may be applied to a project if the LHA and owner/developer, if designated, agree to do so.

(c) This part (1) covers policies and procedures relating to the roles and responsibilities of HUD, the LHA and the owner/developer; the application process; the project development format; the determination of the amount of annual contributions; and invitation, evaluation, and selection of developers' proposals and (2) contains prescribed contracts, agreements and other documents.

§ 1272.102 Definitions.

(a) *Fair market rent and gross rent.* Fair market rent is the gross rent (including utilities, ranges and refrigerators, parking, and all maintenance and management services) for dwelling units of varying size (number of bedrooms) and structure type, which, as determined at least annually by HUD, would be required to be paid in each housing market area in order to obtain privately developed and owned, newly constructed rental housing of modest (nonluxury) nature meeting the objectives of the HUD Minimum Property Standards. Gross rent includes all utilities (except telephone) whether or not paid directly to the utility company by the family. In order to allow for the period of construction, the fair market rent, as determined by HUD, will include HUD's estimate of anticipated rent increases during a period of two years from the date of the fair market rent determination.

(b) *Gross family contribution.* The portion of the rent to owner payable by a family plus the utility allowance established by the LHA for any utilities (except telephone) payable directly by the

family. In no event shall the gross family contribution exceed one-fourth of the family's adjusted income as defined by HUD.

(c) *Utility allowance.* An amount, determined by the LHA and approved by HUD as an allowance for the cost of tenant-purchased utilities, which is deducted from the fair market rent for purposes of determining the maximum rent to owner and is included in the gross family contribution.

(d) *Annual contributions contract (ACC).* A written agreement between HUD and an LHA to provide annual contributions to the LHA for participation in the Housing Assistance Payments Program. (See Appendix X to this part.)

(e) *Agreement to enter into housing assistance payments contract ("Agreement").* A written agreement between an LHA and an owner/developer that upon satisfactory completion of the housing by the owner/developer pursuant to agreed upon plans, specifications and other requirements as set forth in the Agreement, the LHA will enter into a Housing Assistance Payments Contract with the owner. (See Appendix XI to this part.)

(f) *Housing assistance payments contract ("Contract").* A HUD-approved written contract between an LHA and an owner for the purpose of providing housing assistance payments on behalf of eligible families. (See Appendix XII to this part.)

(g) *Eligible families.* Those families determined by the LHA to meet the requirements for admission into housing assisted hereunder. Families shall not be eligible for housing assistance payments when the LHA determines that 25 percent of adjusted family income (as defined by HUD) equals or exceeds the gross rent for the unit leased. The ineligibility of such families for housing assistance payments shall not affect the family's other rights under its lease.

(h) *Certificate of family participation.* The certificate issued by an LHA declaring a family to be eligible for participation in this program and stating the terms and conditions of such eligibility. (See Appendix XIII to this part.)

(i) *Lease.* An LHA-approved written agreement between a private owner and an eligible family for the leasing of a decent, safe, and sanitary dwelling unit. The lease shall contain the required provisions specified in the Contract.

§ 1272.103 Basic policies.

(a) *Limitation on use of newly constructed housing.* New Construction projects shall be permitted: (1) In those localities where HUD determines that there is not and there is not likely soon to be an adequate supply of existing housing which, with the aid of housing assistance payments provided under this program, can meet the housing needs of low-income families, or (2) in certain areas in which the proposed housing is required and such projects are specifically approved by HUD in accordance with priorities established from time to time by the Secretary.

(b) *Development process.*—(1) *Projects involving 20 percent or less assistance.* LHAs may negotiate directly with developers, in accordance with the provisions of § 1272.204 of this part, for housing projects in which 20 percent or less of the units will be assisted in a single structure or complex of five or more units.

(2) *Projects involving more than 20 percent assistance.* For projects which will provide housing assistance under this program to more than 20 percent of the units in a single structure or complex of five or more units, any owner (defined to include a developer) who has a site, a site option or other evidence of site control may submit a proposal to provide housing opportunities for low-income families in newly constructed housing. Such proposals shall be in response to an Invitation for Proposals (see Appendix IV to this part) published by the LHA. If the proposal is acceptable to the LHA and HUD, the LHA will send the developer a Notification of Developer Selection (see Appendix VIII to this part) and will enter into an Agreement with him.

(c) *Annual contributions.* (1) The maximum total annual contribution that may be contracted for in the ACC for a project shall be: (1) the total of the HUD-approved maximum rents to owner (see § 1272.103(e)) plus the utility allowance, if any, for tenant-purchased utilities (see § 1272.102(c)) for all the units in the project plus (2) an allowance for the cost of administration. The allowance for the preliminary costs of administration and an amount for security and utility deposits (see § 1272.105) shall be payable out of this total.

(2) A project account, which shall at no time exceed an amount equal to 10 percent of the maximum annual contribution may be established and maintained out of amounts by which the maximum annual contributions for any years are not otherwise payable in such years. This account shall be established and maintained by the LHA or by HUD, as determined by HUD, as a specifically identified and segregated account, and payment shall be made therefrom, as approved by HUD, only for the following purposes:

- (i) Increases in housing assistance payments;
 - (ii) Increases in the allowance for LHA administrative expenses;
 - (iii) Increases in fund requirements for security and utility deposits; and
 - (iv) Other expenditures specifically authorized or approved by the Secretary.
- Any balance in this account after payment of the last annual contribution for the project shall be paid to HUD.

(d) *Housing assistance payments.* (1) The housing assistance payments will pay the owner the difference between the rent chargeable by the owner as specified in the Contract and that portion of said rent payable by the family.

(2) Housing assistance payments shall be paid to owners only for units under lease by eligible families (except as provided in the Contract). If a family vacates its unit in violation of the pro-

visions of its lease, the owner may continue to receive housing assistance payments with respect to such unit in accordance with the terms of the Contract, not beyond the term of the lease, but only if the owner (i) immediately upon learning of the vacancy, has taken all feasible action to fill it, including, but not limited to, contacting families on his waiting list, requesting the LHA to refer eligible families, and advertising the availability of the unit, (ii) has promptly (within 30 days of the date the family vacated the unit) notified the LHA of the vacancy and the reasons for the vacancy, and (iii) has not rejected, except for good cause acceptable to the LHA, any substitute family provided by the LHA.

(e) *Maximum rents to owners.* (1) The rents to owners that may be contracted for pursuant to the HUD-approved Housing Assistance Payments Contract ("Contract") between the LHA and the owner shall not exceed the lesser of:

(i) The HUD-established fair market rents for newly constructed rental housing for the locality or localities in which the units are located, less any allowance for utilities payable directly by families. These fair market rents may be exceeded by up to 10 percent in establishing the initial Contract rents for a project if the Assistant Secretary for Housing Production and Mortgage Credit determines that higher rents are justified and necessary to provide required special design features for elderly and handicapped persons.

(ii) Rents determined by HUD to be reasonable in relation to the quality, location, amenities, and management and maintenance services of the project.

(2) In addition, in the case of projects financed with HUD-insured mortgages, the rents for units assisted under this program shall not exceed the lower of:

(i) The rents stated in the HUD-approved section 23 proposal, or

(ii) The rent formula rents established by HUD in connection with the mortgage insurance for such projects.

(f) *Term of housing assistance payments contract.* The LHA and owner may enter into a Contract for a maximum initial term of five years, with an option in the owner to renew for an additional term(s) of not more than five years each, provided that the total Contract term, including renewals, shall not exceed twenty years. (If the project is accepted in stages, the dates for the initial and the renewal terms shall be separately related to the units in each stage. However, the total Contract term for the units in all stages may not exceed 22 years from the beginning of the first fiscal year under the ACC.) However, the LHA may notify the owner that it will not agree to renew if it determines that the owner is in default under the terms of the Contract.

(g) *Rent adjustments.* Contract rents shall be adjusted, subject to the limitations contained in subparagraphs (4) and (5) of this paragraph, as follows:

(1) *Automatic annual adjustments.* (i) On each anniversary date of the Con-

tract, the latest monthly rents shown in the Contract shall be adjusted automatically by applying, as an adjustment factor, the HUD-determined percentage change in the fair market rent for existing housing for the market area in which the project is located; provided that the adjustment factor determination is not more than one year old.

(ii) The percentage change in fair market rent for existing housing will be determined annually on the basis of intervening change in the Bureau of Labor Statistics (BLS) index of rents for those localities for which BLS publishes rent indices. For all other localities, adjustment factors will be the averages of changes in BLS rent indices for reporting cities within the respective census regions of the localities. Note: Any local adjustments in existing housing fair market rents, made in accordance with HUD procedures, due to local market conditions or other local factors not reflected in BLS rent indices will be excluded in determining the change in the existing housing fair market rent to be used herein.

(iii) Rents may be adjusted upward or downward, as may be appropriate; however, in no case shall the adjusted rents be less than the rents set forth in the Contract on the date of execution of the Contract.

(2) *Special additional adjustments.* Special additional adjustments may be granted when approved by the Secretary for substantial, general increases in property taxes and/or utility rates but only if and to the extent that the owner clearly demonstrates that such general increases have caused increases in the owner's operating costs which are not adequately compensated for by automatic annual adjustments.

(3) *Renegotiations.* The then current rents contained in the Contract may only be renegotiated to become effective at the beginning of the sixth, eleventh, and sixteenth years of the Contract (if the Contract is renewed for that length of time), whether or not such effective date of renegotiation coincides with the beginning of a renewal term. Rents may be renegotiated above the rents which would be permitted by the automatic annual adjustment, if the owner submits to HUD financial statements which clearly support the increase. HUD shall review such statements and may approve rents which reflect reasonable amounts for project operation and return on investment in comparison with comparable rental projects of the same age. Renegotiated rents shall not be applied retroactively.

(4) *Projects financed with HUD-insured mortgages.* Notwithstanding any other provisions of this part, in no case may rents for projects financed with HUD-insured mortgages exceed the rent formula rents established by HUD in connection with the mortgage insurance for such projects.

(5) *Limitation.* The LHA will make housing assistance payments in increased amounts commensurate with rent adjustments or renegotiations un-

der this paragraph, but only to the extent possible within the limits of the maximum total amount of annual contributions payable under section 1.3(b)(1) of Part I of the ACC. No commitment is made by the LHA or HUD that such maximum total amount of annual contributions will be increased by reason of any such rent adjustments or renegotiations. However, the owner may select eligible families in light of this limitation so that his total receipts (family rents and housing assistance payments) would be commensurate with the adjusted or renegotiated Contract rents.

(h) *Eligible agencies.* (1) All legally constituted local housing authorities created pursuant to State housing authorities laws are eligible to participate in this program. In addition, under the terms of the U.S. Housing Act, a "public housing agency" may include any State, county, municipality or other governmental entity or public body which is authorized by State law to engage in the development or administration of low-income housing or slum clearance and may, therefore, be eligible to participate in this program. The abbreviations "LHA" or "LHAs" as used herein include any governmental entity or public body as described in this paragraph.

(2) LHAs may, by agreement, cooperate with each other in carrying out their respective functions, and State laws typically provide that a locality which has no LHA can invite another LHA within the State to function within its borders.

(3) In addition to the few States that have created statewide LHAs, many more have state departments or agencies authorized to administer housing and urban development legislation which qualifies them as public housing agencies under the U.S. Housing Act and authorizes them to carry out this function or to act through LHAs or other entities.

(i) *Local governing body approval.* HUD cannot approve an application for a section 23 new construction project unless the governing body of the locality in which the units are to be located has, by resolution, approved the application of the provisions of section 23 to the locality. Once such a resolution has been enacted, it may satisfy this approval requirement for all subsequent section 23 leasing projects, including new construction projects. The terms of the resolution as enacted must be examined by the LHA and HUD to determine whether it contains any restrictive language (e.g., limits the number of dwelling units, limits the program to locations which would have the effect of denying equal housing opportunities, or authorizes only the leasing of existing housing) which would require that a new resolution be passed to enable HUD to approve the proposed project.

(j) *Types of housing to be developed.* The LHA may utilize newly constructed single-family houses, row houses, or multifamily structures. In addition, congregate housing may be developed for elderly or handicapped families and individuals. Single room occupant (SRO) housing planned specifically as a reloca-

tion resource for single persons (who qualify for low-rent public housing) may also be developed under the new construction program. (See the appropriate HUD requirements for guidelines and standards applicable to congregate and SRO housing.) High-rise elevator projects for families with children may not be utilized unless HUD determines there is no practical alternatives. Mobile homes may not be utilized in the new construction program. Generally, housing to be developed for use in this program should correspond to the predominant housing patterns of the locality in terms of structure type and density.

(k) *Limitation on number of units in single structure.* (1) Section 23(c) of the U.S. Housing Act provides that no more than 10 percent of the units in any single structure shall be assisted unless the LHA, because of the limited number of units in the structure or for any other reason, determines that such limit should not be applied. Where the LHA determines that the 10 percent limitation should not be applied, a record of its determination shall be maintained in the LHA's permanent file, and the LHA shall notify HUD of its action.

(2) However, in approving applications for assistance HUD will give priority to those applications which would provide for housing assistance for 20 percent or less of the units in a single multifamily structure or complex of five or more dwelling units. However, applications for (i) housing to be specifically designed for occupancy by the elderly or handicapped or (ii) programs of 25 or fewer units shall be considered for approval without regard to such priority.

(l) *Relocation requirements.* No Agreement shall be executed for housing which is to be constructed on a site which has occupants unless (1) the owner voluntarily undertakes liability for and provides for the funding of all relocation costs (see section 7 of the Agreement) or (2) other commitments, satisfactory to HUD, have been made for the funding of such costs.

(m) *Equal opportunity and other requirements.* Participation in the section 23 Housing Assistance Payments Program—New Construction requires compliance by all participants with (1) Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, Executive Orders 11063 and 11246, section 3 of the Housing and Urban Development Act of 1968, and the National Environmental Policy Act; and (ii) all rules, regulations, and requirements issued pursuant thereto.

(n) *Methods of finance.* (1) The following types of financing may be utilized:

(i) Conventional loans from commercial banks, savings banks, savings and loan associations, pension funds, insurance companies or other financial institutions;

(ii) Market rate HUD-insured mortgage loans under sections 207, 220, 221(d) (3) (use of this section is limited to non-profit sponsors), 221(d) (4), and 231 of the National Housing Act;

(iii) Section 515 of the Housing Act of 1949, administered by the Farmers Home administration (provided that a family receiving the benefit of housing assistance payments may not also receive the benefit of interest reduction payments); and

(iv) Financing by bonds or other obligations of State housing or development agencies which are authorized to participate in the Section 23 Housing Assistance Payments Program; State Agency Participation (see Notice of Proposed Rulemaking, 39 F.R. 10262, March 19, 1974) or which participate in HUD programs for Non-Insured Assisted Projects by State and Local Governments.

(2) The following types of financing shall not be utilized:

(i) All of the unnamed remaining mortgage insurance programs under the National Housing Act;

(ii) Direct or indirect financing by bonds or other obligations of an LHA (except State housing or development agencies as permitted in subparagraph (1) (iv) above);

(iii) Direct or indirect financing by an organization or entity on behalf of an LHA or other public body, or by an organization or entity which is an agency or instrumentality of an LHA or other public body, or by an organization or entity which has an identity of interest with an LHA or other public body.

(o) *Security and utility deposits.* Generally, families shall be expected to obtain the funds to pay security deposits (not to exceed one month's total rent to owner) and/or utility deposits, if required, from their own and/or other private or public sources. In hardship cases where families are unable to obtain funds to pay the required amounts, the LHA may pay on behalf of the families the necessary deposits (except telephone). In order to be eligible for such assistance by an LHA, families shall be required to pay, as a first installment towards repayment of the funds advanced by the LHA an amount at least equal to the lesser of: one-twelfth of the total required security and/or utility deposits, or one month's gross family contribution (see § 1272.102 (b)). The LHA will pay the full amounts required to owners and/or utility companies. The amounts advanced by the LHA from its funds shall be recovered from the families by the LHA generally over a one-year period. Recovery shall be accomplished by adding to the family's monthly rent payment to owner an appropriate additional amount specified in the Security Deposit Agreement, shown as Appendix XVI to this part, which shall be remitted to the LHA with the owner's monthly request for housing assistance payments on the prescribed forms. Failure on the part of the family to pay such amounts shall not affect the amount of housing assistance payments otherwise payable. The amounts remitted to the LHA may be retained by the LHA, in a separate fund in accordance with appropriate HUD accounting procedures, for future payments of security and/or utility deposits as needed, or otherwise ap-

plied in accordance with those procedures.

(p) *Responsibilities of the owner.* The owner shall be responsible for management, maintenance and operation of the project. These responsibilities shall include but not be limited to the payment of utilities (unless paid directly by the family), insurance and taxes; the performance of all ordinary and extraordinary maintenance; performance of all management functions including the taking of applications and selection of families (with the exception of determination and verification of eligibility for the particular dwelling unit involved, which shall be the function of the LHA); collection of rents; risk of loss from vacancies and nonpayment of rent by tenant families; preparation and furnishing of information required by the LHA under the Contract; and compliance with equal opportunity requirements. The LHA shall not provide management, maintenance or operation services to the project except where it is determined by the HUD field office director that such services are not otherwise available in the locality. In such case, the owner may contract with the LHA to perform such services for a prescribed fee, provided that such contract shall not shift to the LHA any of the owner's responsibilities and obligations. Such contract shall be approved by HUD.

(q) *Responsibilities of the LHA.* The LHA shall be responsible for the prompt: Determination of eligibility for assistance; determination of amounts of housing assistance payments; issuance of Certificates of Family Participation to eligible families; notification of families determined ineligible; approval of owner-family leases; making of housing assistance payments on behalf of eligible families; reexamination of family eligibility as prescribed by HUD regulations; inspections prior to leasing and inspections at least annually to determine that the units are maintained in decent, safe, and sanitary condition (failure to do so shall constitute a Substantial Default by the LHA under the Annual Contributions Contract); authorization of evictions; and compliance with equal opportunity requirements. The LHA shall provide advice and guidance to eligible families in finding suitable housing, including advice and guidance to families experiencing discrimination, in a manner affirmatively to further the policies of Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968 and Executive Order 11063.

(r) *Responsibilities of the family.* A family receiving housing assistance under this program shall be responsible for fulfilling all its obligations under both the lease with the owner and the Certificate of Family Participation issued to it by the LHA.

§ 1272.104 Separate project requirements.

A Section 23 new construction project may not include any other type of lease-

ing pursuant to section 23, shall be processed with a separate ACC List and Annual Contributions Contract, Part I and shall be assigned a separate project number. All new construction units to be placed under a single Housing Assistance Payments Contract shall comprise a separate project. However, the field office Director may designate as a single project the units to be covered by two or more such Contracts for new construction projects where:

(a) The units are placed under ACC on the same date; and

(b) Such consolidation is necessary in the interest of administrative efficiency.

§ 1272.105 Submission of estimates of required annual contributions.

(a) *Initial submission.* An allowance may be provided for preliminary costs incurred by the LHA prior to the beginning of the first fiscal year. When the Annual Contributions Contract is executed, the LHA shall submit an Initial Estimate of Required Annual Contributions (Preliminary Costs) on the prescribed form. This submission includes estimates of costs of administration and of nonexpendable equipment up to the beginning of the first fiscal year.

(b) *First fiscal year submission.* Not earlier than 150 and not later than 90 days prior to the estimated date of the beginning of the first fiscal year, the LHA shall submit an additional Estimate of Required Annual Contributions which covers the anticipated amount for security and utility deposits. At the same time, the LHA shall submit an Annual Estimate of Required Annual Contributions, on the prescribed form, for the first fiscal year. This form covers the estimated amount for housing assistance payments and the allowance for the cost of administration.

(c) *Subsequent fiscal year submissions.* Not earlier than 150 and not later than 90 days prior to the beginning of each subsequent fiscal year, the LHA shall submit an Annual Estimate of Required Annual Contributions, with supporting documentation for any requested changes in the amount of housing assistance payments and the allowance for the cost of administration.

(d) *Revisions of estimates.* Any of the above Estimates may be revised to reflect changes in circumstances and available data.

(e) *HUD approval.* All estimates of Required Annual Contributions and any revisions thereof submitted by the LHA shall be subject to HUD approval.

Subpart B—Project Development and Operation

§ 1272.201 Preapplication.

(a) *Determination of need and survey of market.* The LHA shall determine whether there is a need for housing assistance for low-income families within its operating jurisdiction. If it determines that there is such a need, the LHA shall survey the housing market of the locality to determine whether there is a sufficient supply of units that are suitable or may be made suitable to meet all or

part of this need. In determining the adequacy of the housing supply, the LHA shall estimate realistically the number and size (number of bedrooms) of units that may be available, the condition of such units, and the rents at which the units may be leased.

(b) *Preapplication conference.* A preapplication conference with the appropriate HUD field office staff, in person or by telephone, is strongly recommended to assure that an approvable application will be submitted by the LHA. The LHA should be prepared to justify a new construction program, i.e., to show that one or both of the conditions of § 1272.103(a) above are met. The LHA should also indicate the type of project it intends to develop, particularly in terms of number of units, whether it is to be for elderly or family, and if the LHA intends to limit assistance to 20 percent or less of the units in a structure or complex of five or more units in accordance with § 1272.103(k)(2). If the LHA intends to submit an application meeting the condition of § 1272.103(k)(2), it should indicate that there is owner/developer interest in such a project and that the LHA will be able to obtain an appropriate proposal.

§ 1272.202 Submission of application.

(a) *Submission of application.* (1) An application for a new construction project to be submitted by the LHA to the HUD field office shall utilize the prescribed HUD form and shall:

(i) Describe the results of the LHA's survey of the housing market in terms of the number, size (number of bedrooms), condition, and rents of units which may be available;

(ii) Substantiate the existence of the necessary conditions prescribed in § 1272.103(a) for the approval of an application for a new construction project;

(iii) Document the need for housing assistance in terms of family incomes, housing conditions, and rent to income ratios;

(iv) Indicate the type of housing (e.g., row, walkup, semi-detached, detached) that is preferred, the bedroom distribution (i.e., number of one-bedroom units, two-bedroom units, etc.) proposed, and the number of units (if any) to be specifically designed for elderly or handicapped occupancy;

(v) Include an estimate of the cost of administration attributable to the proposed project, and provide a basis for such estimate;

(vi) Provide estimates of the average gross family contribution to be paid by families (not to exceed 25 percent of estimated adjusted family income as defined by HUD) and of utility allowances for utilities to be paid directly by families;

(vii) Indicate whether the LHA intends to meet the unit limitation described in § 1272.103(k)(2) and provide an indication of ability to meet this condition, including evidence of owner/developer interest;

(viii) Indicate the maximum rents to be offered to owners and, if the gross

rents (rent to owner plus utility allowance for tenant-paid utilities) exceed current applicable fair market rents for newly constructed housing (as allowed in § 1272.103(e)), provide justification for such excess;

(ix) Indicate whether the LHA has adopted and implemented an approved tenant selection and assignment plan in compliance with Title VI of the Civil Rights Act of 1964.

(2) HUD Regulation, Project Selection Criteria (24 CFR 200.700), is not applicable; however, see § 1272.209 for required site and neighborhood standards.

(3) Advice and assistance in the preparation of the application are available from the local HUD field office.

(b) *Income limits and rent schedules.*

(1) LHAs not having previously approved income limits and rent schedules shall submit income limits and rent schedules, in accordance with applicable HUD requirements, for approval with their applications for a new construction project.

(2) It is the incomes from families to be housed under the proposed Housing Assistance Payments Program, not the income limits, that is more significant in enabling HUD to determine assistance requirements and the approvability of a particular application. The LHA shall, therefore, provide accurate estimates of anticipated family income and achievable per unit rents to be paid by the families expected to be assisted. In making this estimate, the LHA shall utilize such information as incomes, after deductions and exemptions in accordance with LHA policies, of families on updated, current waiting lists, and rents being paid by tenants in other leased and non-leased units operated by the LHA, as well as incomes of families expected to be housed under the income limits established for the Housing Assistance Payments Program.

§ 1272.203 HUD review and approval of application.

(a) *Review of application.* The appropriate HUD field office shall review the application, to determine whether: There is need for assistance for the number of units applied for; the necessary conditions for approval of a new construction project are met; the estimates of the cost of administration and utility allowances are realistic and allowable by HUD; the reasonably anticipated average gross family contribution is realistic and sufficient in view of the limitation described in § 1272.102(g)(5); and the LHA is in compliance with all equal opportunity requirements. If deemed appropriate, HUD shall make adjustments in size of program, bedroom distribution, the allowance for the cost of administration, utility allowances, or family contributions. Such adjustments shall be accepted by the LHA in order to receive application approval. Where the LHA is found to be in noncompliance with any equal opportunity requirements, appropriate action to effectuate compliance shall be taken.

(b) *Selection of applications for approval.* At least every two months, each HUD office will establish a list of all applications found approvable prior to the date the office has set for establishing such list. The applications will be ranked in accordance with criteria (other than the priority to be given to applications meeting the 20 percent limitation described in § 1272.103(k)(2)) established by the office. Applications shall be selected for approval (issued a Notification of Application Approval) in sequence from the top of the list. When an application is reached which is neither for the elderly (or handicapped) nor for 25 or fewer units but which does not meet the 20 percent limitation, the next application which does meet the 20 percent limitation, if any, shall be selected ahead of such application; but no application for an elderly (or handicapped) project or for a project of 25 or fewer units shall be denied approval by reason of selection of the application meeting the 20 percent limitation. This procedure is demonstrated in the following example:

Office ranking:	Type of application
1.-----	100-unit family project.
2.-----	25-unit family project.
3.-----	100-unit family project.
4.-----	100-unit elderly project.
5.-----	100 assisted units in a family project consisting of 500 units.
6.-----	75-unit elderly project.

In this example, if we assume that the office has sufficient annual contribution authority to approve 325 units, the application meeting the 20 percent priority (number 5) would be approved first, and the applications ranked 1, 2, and 4 would also be approved.

(c) *Approval or disapproval of application.* Upon completion of its review and selection, HUD shall notify the LHA by letter that the application is approved, is approvable but insufficient contract authority precludes issuance of a Notification of Application Approval, can be approved if the LHA adopts, within 30 days, the changes required by HUD, or is disapproved. If the application is disapproved, the letter shall indicate in detail the reasons for disapproval. If the application is approved, the LHA shall be so notified utilizing the prescribed form (see §§ 1272.204 (a) and (b)).

§ 1272.204 Development procedures.

(a) *Projects involving 20 percent or less assisted units.* If the LHA applied for and received approval of a project involving the provision of assistance under this program to 20 percent or less of the units, the prescribed HUD form shall advise the LHA that it may select a developer or developers willing to contract for such housing on a negotiated basis. Such developer's proposal(s) shall be submitted by the LHA to the appropriate HUD field office for approval. The proposal(s) shall comply with the requirements of § 1272.208 below with respect to proposal contents; however, the provisions of § 1272.205, § 1272.206, and § 1272.207 relating to preparation of a

Developer's Packet, publication of an Invitation for Proposals and submission of proposals shall not be applicable to such projects. The developer's proposal(s) submitted by the LHA shall be reviewed by HUD to determine acceptability in accordance with § 1272.211. Such projects shall be subject to all project development and operation procedures contained in §§ 1272.212 through 1272.219.

(b) *Projects involving more than 20 percent assisted units.* For applications approved for projects involving assistance for more than 20 percent of the dwelling units, the prescribed HUD form shall instruct the LHA to prepare a Developer's Packet to be distributed to developers who respond to the LHA's Invitation for Proposals, which shall be published by the LHA upon authorization by HUD to do so. (See § 1272.205, § 1272.206, and § 1272.207 for development procedures relating to preparation of Developer's Packets, Invitations for Proposals, and Submission of Proposals.)

§ 1272.205 Preparation and contents of developer's packet.

HUD shall assist the LHA in preparing the Developer's Packet and shall provide the LHA with copies of all HUD standards, regulations and forms which are to be included in the Packet. The Developer's Packet, which shall be approved by HUD, shall be available for distribution at the time of the first publication of the Invitation for Proposals. In addition to a copy of the New Construction Handbook, the Developer's Packet shall:

(a) Include the following information as to the housing required:

- (1) The number of units and bedrooms per unit.
- (2) The number of units for elderly and non-elderly occupancy.
- (3) The requirement that each unit include a range and refrigerator.
- (4) Community space requirements, if any.
- (5) Parking and outdoor recreational facilities required.
- (6) The type of housing (row house, elevator apartment, detached, etc.).
- (7) The preferred density of projects and type of location desired with reference to physical environment and accessibility to public and commercial facilities (see § 1272.209 (b)).

(b) Include statements as to:

- (1) The requirement that there be no identity of interest between the owner and the LHA, or the management agent, if any, and the LHA. (This does not preclude contracting with LHAs as provided in § 1272.103(p).)
- (2) The necessity to comply with all site selection and neighborhood standards set forth in this Handbook.
- (3) Initial term of the Contract, including any options to renew.
- (4) The requirement that management, ordinary and extraordinary maintenance, utilities (except where paid directly by tenants), taxes, and insurance are to be the responsibility of the owner, except that where the owner can demonstrate that adequate management, main-

tenance, or operation services are not otherwise available in the locality, he may contract with the LHA as provided in § 1272.103(p).

(5) The specific management and maintenance services required to be provided by the owner. Such services shall include all services typically provided in the locality for the type of housing contemplated.

(6) The requirement that the owner submit evidence of management capability and a proposed management program in accordance with the requirements of Appendix V of this part.

(7) Maximum gross rents (including all utilities, ranges and refrigerators), by number of bedrooms per unit, that the LHA will consider, and a statement to the effect that, if families are to pay directly for some or all utilities, the maximum rents will be adjusted downward by a utility allowance covering such utilities; such utility allowance will be specified by HUD and based on a specified utility combination.

(8) The requirement that the rents requested by the owner must be determined to be reasonable in relation to the quality, location, amenities, and management and maintenance services of the proposed project.

(9) The requirement that the LHA shall be responsible only for the housing assistance payment to the owner and only for those units under lease by eligible families.

(10) The requirement that, if the developer intends to utilize HUD mortgage insurance, as permitted in § 1272.103(n), he must submit an application for such insurance to the appropriate Insuring Office in accordance with all normal requirements, and that review of his proposal to develop housing under the section 23 program by the LHA and approval by HUD in no way substitute for required processing procedures under the applicable HUD mortgage insurance program.

(c) Call attention to and supply detailed information concerning:

(1) Applicability of the appropriate HUD Minimum Property Standards: These standards specify minimum acceptability and constitute a floor for design and planning. They do not prohibit utilizing higher standards. Proposed construction should also comply with special requirements due to local climatic, topographic or environmental conditions.

(2) HUD relocation requirements.

(3) Equal opportunity requirements, which include the submission of an Affirmative Fair Housing Marketing Plan, a signed assurance of compliance with Title VI of the Civil Rights Act of 1964, and compliance with Executive Order 11063, Title VIII of the Civil Rights Act of 1968, including regulations and guidelines pursuant thereto, and in bid condition areas, certifications required pursuant to Executive Order 11246.

(4) HUD regulations and other requirements implementing section 3 of the Housing and Urban Development Act of 1968 that, to the greatest extent feasible,

opportunities for training and employment be given to lower income residents of the project area and contracts for work in connection with the project be awarded to business concerns which are located in or owned in substantial part by persons residing in the area of the project.

(5) HUD requirements implementing the National Environmental Policy Act.

(6) The prescribed form of Agreement to Enter Into Housing Assistance Payments Contract and the prescribed form of such Contract (see Appendices XI and XII to this part, respectively).

(7) The number of copies of the proposal to be submitted to the LHA.

(8) The latest date by which proposals must be received by the LHA and that there exists no obligation to select any of the proposals received.

§ 1272.206 Invitation for proposals.

(a) *Authorization to publish.* Upon approval of the Developer's Packet by HUD, the HUD field office shall transmit to the LHA an Invitation for Proposals which shall conform to Appendix IV. The LHA is authorized to publish the Invitation for Proposals immediately upon receipt.

(b) *Publication of invitation for proposals.* The LHA shall publish the Invitation for Proposals at least once a week for two consecutive weeks in a newspaper of general circulation within the locality. The LHA shall also notify appropriate business concerns included in HUD's registry of section 3 businesses for the applicable political jurisdiction. The LHA shall also utilize other non-minority and minority media, publish the Invitation in trade association journals, and/or send copies of the Invitation to active developers and builders.

(c) *Deadline date for receipt of proposals.* The deadline date for receipt of proposals by the LHA shall be no earlier than 28 days after the date of the last publication in the newspaper of general circulation.

(d) *Copies of published invitation.* Prior to the deadline date for receipt of proposals, the LHA shall provide HUD with two certified copies of each published Invitation and a statement of other publicity methods used. One copy of the Invitation shall be available in the LHA's office for public inspection.

(e) *Nondisclosure of information.* In order to provide all interested developers with an equal opportunity to prepare proposals, the contents of the Invitation for Proposals or requirements to be included in the Developer's Packet shall not be disclosed prior to publication.

(f) *Assistance after publication of invitation.* Although the information in the Developer's Packet should be sufficient to enable a developer to prepare a proposal, a developer may request clarification from the LHA of the information contained in the Packet.

§ 1272.207 Submission of proposals.

(a) Owners and/or developers shall be required to submit sealed copies of their complete proposals to the LHA before the published deadline, in the num-

ber of copies specified in the Developer's Packet. Proposal documents shall be sealed in an envelope or package which shall be clearly marked with a label contained in the Developer's Packet. The label shall be clearly and distinctively marked "Section 23 Housing Assistance Payments Program—New Construction Proposal", shall show the name of the LHA and the project designation, and shall be addressed to the LHA. The label on the inner envelope shall be marked "Sealed Proposal—Open on (date and time)".

(b) Submission of proposals shall be by hand delivery or certified mail. Any proposal received by the LHA after the deadline shall not be accepted by the LHA but shall be returned unopened. No proposal shall be opened by the LHA until after the deadline. The LHA shall advise HUD by letter immediately after the deadline for receipt of proposals as to the number of proposals received and the names of the proposers.

§ 1272.208 Proposal contents.

(a) Each proposal shall include the following:

(1) A description of the housing proposed together with preliminary drawings and plans and outline specifications on the prescribed form. Preliminary drawings and plans shall include: site layout based on the topographical information available from existing records and the known subsurface soil conditions; landscape plans; general floor plans and unit plans, at the scale of 1/4 inch equals one foot; and elevation drawings for each typical building at the same scale.

(2) A copy of the site option agreement(s) contract(s) of sale, or other document(s) which evidences developer's effected control of the site(s).

(3) A neighborhood map showing the location(s) of the site(s) and the racial composition of the neighborhood(s).

(4) A completed HUD Environmental Information Form.

(5) A statement as to whether the proposed project is expected to displace site occupants; the number of families, individuals and business concerns to be displaced (identified by race or minority group status); an estimate of relocation costs; and a statement that the owner and/or developer recognizes the relocation requirements that apply if the proposed project will cause displacement, will assume full responsibility for the funding of all costs incurred in providing to displaced persons the full relocation payments and services authorized by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, and will comply with all relocation requirements pursuant to that Act unless other commitments, which the owner believes to be satisfactory to HUD, have been made for the funding of such relocation costs. In the latter case, the owner shall specify such other commitments.

(6) Submission of an Affirmative Fair Housing Marketing Plan, a signed assurance of compliance with Title VI of

the Civil Rights Act of 1964, and in bid condition areas, certifications required pursuant to Executive Order 11246.

(7) Submissions as required by HUD regulations and other requirements pursuant to section 3 of the Housing and Urban Development Act of 1968.

(8) Submission of evidence of management capability and a proposed management program as required by Appendix V of this part, which shall include both a statement that all the management and maintenance services required by the LHA will be provided and a list of those services. If the owner proposes to contract with the LHA (see § 1272.103(p)) he shall demonstrate that adequate management, maintenance, or operation services are not otherwise available in the locality and attach a proposed contract, specifying the proposed fee.

(9) A statement that none of the types of financing prohibited in § 1272.103(n)(2) will be utilized.

(b) In addition, each proposal shall indicate or include:

(1) Who the developer, the builder and the owner/lessor will be; the qualifications and experience of each; and the names of officials and principal members, shareholders and investors, and other parties having substantial interest, using the prescribed form.

(2) The present zoning and proposed action for rezoning if current zoning is not permissible.

(3) The gross rents required by unit size, the portion of such rents attributable to each utility, and which utilities, if any, are to be paid directly by the families.

(4) The anticipated time required for construction of the improvements after the Agreement is signed (if the project is to be completed in stages, identification of the units comprising each stage and the estimated dates for commencement and completion of each stage).

§ 1272.209 Site and neighborhood standards.

(a) Proposed sites for new construction projects must be approved by HUD as meeting the following standards:

(1) The sites and neighborhoods shall be suitable from the standpoint of facilitating and furthering full compliance with the applicable provisions of Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968 (and of Executive Order 11063 with respect to creed), and HUD regulations issued pursuant thereto.

(2) The site shall not be located in:

(i) An area of minority concentration unless (A) sufficient, comparable opportunities exists for housing for minority families, in the income range to be served by the proposed project, outside areas of minority concentration, or (B) the project is necessary to meet overriding housing needs which cannot otherwise feasibly be met in that housing market area. (An "overriding need" may not serve as the basis for determining that a site is acceptable if the only reason the need cannot otherwise fea-

sibly be met is that discrimination on the basis of race, color, religion, creed, or national origin renders sites outside areas of minority concentration unavailable.)

(ii) A racially mixed area if the project will cause a significant increase in the proportion of minority to non-minority residents in the area.

(3) The site shall be free from adverse environmental conditions, natural or manmade, such as instability, flooding, septic tank backups, sewage hazards, or mudslides; harmful air pollution, smoke or dust; excessive noise, vibration, or vehicular traffic; rodent or vermin infestation; or fire hazards. Moreover, the neighborhood must not be one which is seriously detrimental to family life; and substandard dwellings or other undesirable elements should not predominate unless there is actively in progress a concerted program intended to upgrade the neighborhood.

(b) The housing shall be accessible to social, recreational, educational, commercial, and health facilities and services, and other municipal facilities and services that are at least equivalent to those typically found in neighborhoods consisting largely of unsubsidized, standard housing of similar market rents.

(c) Travel time and cost via public transportation or private automobile, from the neighborhood to places of employment providing a range of jobs for lower income workers, is not excessive. (While it is important that elderly housing not be totally isolated from employment opportunities, this requirement need not be adhered to rigidly for such projects.)

(d) The project may not be built on a site which has occupants unless (1) the owner and/or developer of the project voluntarily undertakes liability for and provides for the funding of all relocation costs (see section 7 of the Agreement) or (2) other commitments, satisfactory to HUD, have been made for the funding of such costs.

(e) The project may not be built in an area that has been identified by HUD as having special flood hazards and in which the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, unless the project is covered by flood insurance as required by the Flood Disaster Protection Act of 1973.

§ 1272.210 Prohibition of use of preselected sites.

With the exception of sites in Urban Renewal areas, the use of preselected sites, e.g., sites designated by the LHA for development of section 23 housing held under options transferable to a selected developer, is prohibited. Where needed to meet special situations, a waiver of this prohibition on a case basis may be provided by the Assistant Secretary for Housing Production and Mortgage Credit-FHA Commissioner upon receipt of appropriately documented justification and recommendations for approval from the appropriate HUD field office and the appropriate HUD Regional Office.

§ 1272.211 Evaluation of proposals.

(a) *Identity of interest.* Any proposal from an owner having an identity of interest with the LHA shall not be eligible for consideration. Any proposal which includes the use of a management agent having an identity of interest with the LHA shall be unacceptable with respect to the management program (this does not preclude contracting with LHAs as provided in § 1272.103(p)).

(b) *LHA evaluation of proposals.* Each proposal received shall be evaluated by the LHA, utilizing the LHA Review Checklist for section 23 New Construction Proposals (shown as Appendix VI to this part), on the basis of all pertinent factors including, but not limited to: Site; design and construction quality; rents; capability and responsibility of developer, builder, and owner; management capability of owner and/or management agent, or, where applicable, the acceptability of the proposed management contract with the LHA; and compliance with Equal Opportunity requirements and with requirements for provision of employment and training and business opportunities in the project area. In making its selection from among proposals, but taking into account its evaluation of all other factors listed above, the LHA shall select the proposal with the lowest gross rents. If such proposal is not selected by the LHA, the LHA shall submit to HUD a justification for selecting another proposal over a proposal(s) with lower gross rents at the time it notifies HUD of its tentative selection (see paragraph (c) of this section). For purposes of determination of acceptability, no changes in proposals shall be considered after the deadline date for receipt of proposals, except that the LHA may request clarification of individual items or additional information which does not alter the scope of the proposal.

(c) *Tentative selection of developer.* The LHA shall tentatively select a proposal or proposals and submit such proposal(s), together with a copy of the completed LHA Review Checklist, to HUD for approval prior to disclosure of the LHA's tentative selection.

(d) *HUD evaluation of proposal.* Upon receipt HUD shall evaluate the submitted proposal(s) and send a copy of the developer's completed HUD Environmental Information Form, to the appropriate A-95 Clearinghouse for review, if applicable. HUD shall notify the LHA as to whether or not the proposal is approvable. If the proposal is unapprovable, the LHA shall be advised that it may submit another proposal which the LHA believes meets all program requirements, or re-advertise. If HUD finds the proposal approvable only if the proposed rents are reduced to amounts considered approvable by HUD, the LHA shall be so notified and instructed to notify the developer that he may be selected only if the rents are reduced, without reducing the quality of the project, in accordance with the HUD determination. A copy of any such notification to the developer shall be sent to the HUD field office.

§ 1272.212 Notification of developer selection.

(a) *LHA selection of developer.* Upon receipt by the LHA of HUD approval, the LHA shall notify the developer(s) of his (their) selection using the prescribed form of letter (Notification of Developer Selection) shown as Appendix VIII to this part. Upon acceptance of the Notification by the developer, the LHA shall immediately transmit a copy of the accepted Notification to the HUD field office together with a copy of the LHA's resolution selecting the developer. If the developer does not accept the Notification by the date specified, the LHA may rescind the Notification and submit to HUD for approval another proposal which the LHA believes meets all program requirements, or the LHA may re-advertise.

(1) *Estimate of relocation costs.* If the estimate of relocation costs provided in the proposal (see § 1272.208(a)(5)) is determined by HUD to be inaccurate, the developer shall be advised in the letter of notification as to the correct amount.

(2) *Architect's certification.* The LHA letter of notification to the developer shall advise him that before the LHA may enter into an Agreement, the developer shall submit to HUD and the LHA the architect's certification required in the Notification. Such certification shall be prepared by the architect responsible for the preparation of the working drawings and specifications. If the developer fails to submit the certification by the date specified in the letter, the LHA shall rescind the Notification unless it determines that a reasonable extension of time should be granted. A copy of the letter of extension or rescission shall be transmitted to HUD.

(b) *Availability of LHA analysis of proposals.* The LHA analysis of each proposal shall be held available for public inspection in the LHA office for at least three years following the Notification of Developer Selection.

§ 1272.213 Annual contributions contract.

Upon receipt of the architect's certification, the HUD field office shall prepare the Annual Contributions Contract, utilizing the prescribed form shown as Appendix X to this part. The Annual Contributions Contract shall be transmitted to the LHA for execution and return to HUD.

§ 1272.214 Agreement to enter into housing assistance payments contract.

(a) *Preparation of agreement.* The Agreement shall be prepared by HUD at the time the Annual Contributions Contract is prepared (see § 1272.213), utilizing the prescribed form shown in Appendix XI to this part. The Agreement shall include, but not be limited to, the following:

(1) A description of the property and the improvements to be constructed.

(2) An attachment of the proposed Contract, complete in all respects except for execution, which shall specify the amount of rent to owner and conform

to the prescribed form shown as Appendix XII to this part.

(3) Construction initiation and completion dates, including initiation and completion dates of stages if staged completion is agreed to.

(4) How project completion shall be evidenced (see § 1272.215(a)).

(5) A provision that the owner may not:

(i) Make any sale, assignment, or conveyance or transfer in any other form of his interests in the Agreement except:

(A) With the prior consent of the LHA and HUD; or

(B) To a financial institution for the purpose of obtaining financing.

(ii) Change to a different developer from the one named in the Agreement without prior consent of the LHA and HUD.

The assignment by the owner of the Agreement or project to a limited partnership of which the owner is the general partner shall not be considered an assignment hereunder.

(6) Provisions that the owner shall comply with relocation requirements as set forth in applicable HUD issuances, HUD Equal Opportunity (including equal employment opportunity) requirements as set forth in applicable HUD issuances and regulations, and the requirements of section 3 of the Housing and Urban Development Act of 1968 and regulations issued pursuant thereto in regard to providing opportunities for training and employment to lower income residents of the project area, and in regard to awarding contracts to business concerns located in, or owned in substantial part by residents of, the project area.

(b) *Execution of agreement.* After receipt of the LHA-executed ACC, HUD shall execute the ACC and shall transmit a fully executed copy to the LHA, together with four copies of the unexecuted Agreement. A copy of the Agreement, executed by the LHA and the owner, shall be returned to HUD.

(c) *Construction.* Upon execution of the Agreement, the owner shall promptly proceed with construction as provided in the Agreement. In the event the work is not so commenced and/or diligently continued, the LHA shall have the right to cancel the Agreement, subject to HUD approval. For projects financed with HUD-insured mortgages, required HUD inspection procedures shall be followed.

§ 1272.215 Project completion.

(a) *Notification of completion.* Upon completion of the project, the owner shall notify the LHA and HUD that the project is completed and shall submit to the LHA the evidence of completion described in paragraph (b) of this section.

(b) *Evidence of completion.* Completion of the project shall be evidenced by the following:

(1) A set of as-built drawings;

(2) A certificate of occupancy and/or other official approvals necessary for occupancy;

(3) Separate certifications by the registered architect responsible for the preparation of the working drawings and

specifications (see § 1272.212(a)) and by the owner that:

(i) All work has been completed in accordance with the requirements of the Agreement;

(ii) The project is in good and tenantable condition;

(iii) There are no defects or deficiencies in the project other than ordinary punchlist items. If there are punchlist items, the owner shall, as agreed to by the LHA, the owner and HUD, make a deposit in escrow to cover such items. In such case, if the owner fails to complete the punchlist items within a reasonable time to the satisfaction of the LHA, the LHA may, upon 30 days notice and with the approval of HUD, terminate the Housing Assistance Payments Contract.

(c) *HUD inspection.* (1) Within ten working days of the receipt of the owner's notification of project completion, the LHA representative, accompanied by a HUD representative, shall inspect the project and review the evidence of completion listed in paragraph (b) above. As promptly as possible HUD shall notify the LHA as to whether or not the project has been satisfactorily completed and whether the requirements of § 1272.216 (a) have been complied with.

(2) If it is determined that the project has not been satisfactorily completed, HUD shall notify the LHA and advise it of the corrective action needed.

(3) In the event the owner disputes HUD's finding, he may submit the controversy to third-party arbitration, at his expense, provided that the arbitration is advisory only.

(4) Prior to authorizing execution of the Housing Assistance Payments Contract, HUD shall verify that appropriate corrective action has been taken.

(d) *Staged completion.* If the project is to be completed in stages, the procedures of paragraphs (a), (b), and (c) of this section shall apply to each stage.

§ 1272.216 Execution of housing assistance payments contract.

(a) Prior to HUD's authorization of execution of the Housing Assistance Payments Contract, the owner must certify in writing that there has been no change in the evidence of management capability and proposed management program as specified in his proposal other than changes approved in writing by the LHA and HUD in accordance with section 3 of the Agreement.

(b) If HUD determines that the project has been satisfactorily completed in accordance with the provisions of § 1272.215 above and approves such certification and the changes, if any, as to the evidence of management capability and management program, HUD shall authorize execution of the Contract.

(c) Upon receipt of authorization from HUD, the LHA shall execute the Housing Assistance Payments Contract with the owner and transmit a copy of the executed Contract to the HUD field office for approval. If the Contract is found approvable, an approved copy shall be returned to the LHA. If the Contract is not approvable, the LHA shall be notified by

HUD as to the necessary changes to be made before the Contract can be approved.

§ 1272.217 Project operation.

(a) *Occupancy.* Marketing by the owner and determinations of family eligibility and approval of owner-family leases by the LHA shall begin no later than 90 days prior to project completion and be accomplished so as to achieve rapid occupancy.

(b) *Compliance with equal opportunity requirements and applicable LHA admission regulations.* Marketing of units and selection of families by the owner shall be in accordance with the owner's HUD-approved Affirmative Fair Housing Marketing Plan and with all regulations relating to fair housing advertising including use of the equal opportunity logo-type, statement, and slogan in all advertising, and with applicable LHA regulations establishing admission policies, including policies, if any, carrying out its responsibility for rehousing displaced families. Projects shall be managed and operated without regard to race, color, creed, sex, or national origin.

(c) *Selection of families for participation.* The owner shall be responsible for selection of families, subject to certification of eligibility by the LHA. The owner shall request the LHA, in accordance with procedures to be agreed upon by the owner and the LHA, to certify the eligibility of a selected family and to approve the proposed owner-family lease. Such request shall be made by submitting to the LHA the Determination of Family Eligibility and Lease Approval, shown as Appendix XIII to this part. The owner and the family shall complete Part I of the form, Request for Determination, and submit, with the request, the proposed owner-family lease, complete except for execution and the amount of rent payable by the family.

(d) *LHA determination of family eligibility and lease approval.* Within the time period specified in the Agreement and the Contract, the LHA shall return a copy of Part II of Appendix XIII to this part, Authority Determination, to the owner and the family indicating one of the following:

(1) That additional, specified information is required from the owner to enable the LHA to make its determination.

(2) That the family is eligible, as evidenced by a Certificate of Family Participation (Part III of Appendix XIII to this part) issued and signed by the LHA, and that the dwelling unit specified in the lease and the lease itself meet program requirements and are approved. (See § 1272.217(e) for lease requirements.) The owner shall thereupon notify the family that it may occupy the leased unit on a stated date after signing the Certificate and after execution of the lease and the Security Deposit Agreement, if any. A copy of each signed document shall be returned to the LHA by the owner.

(3) That the request cannot be approved because the family is not eligible or the dwelling unit or the proposed

lease does not meet program requirements.

Records on applicant and certified families shall be maintained by the LHA so as to provide HUD with racial and ethnic data.

(e) *Lease requirements.* The owner-family lease shall contain all required provisions specified in section 15 of the Contract and none of the prohibited provisions listed in subparagraph (2) of this paragraph and shall otherwise conform to the terms of the Contract and the provisions of this part.

(1) *Term of lease.* The term of the lease shall be for not less than one year and shall generally be for not more than one year, but may contain a provision permitting termination upon 30 days advance written notice by either party. The specified lease term, including specified renewal options, if any, shall in no case exceed five years or the term of the Housing Assistance Payments Contract (see section 5 of Contract), whichever is shorter.

(2) *Prohibited provisions.* Lease clauses which fall within the classifications listed below shall not be included in any owner-family lease.

(i) *Confession of judgment.* Constitutes prior consent by tenant to any lawsuit the landlord may bring against him in connection with the lease and to a judgment in favor of the landlord.

(ii) *Distraint for rent or other charges.* Agreement by tenant that landlord is authorized to take property of the tenant and hold it as a pledge until the tenant performs the obligation which the landlord has determined the tenant has failed to perform.

(iii) *Exculpatory clauses.* Agreement by tenant not to hold the landlord or or landlord's agents liable for any acts or omissions whether intentional or negligent on the part of the landlord or the landlord's authorized representatives or agents.

(iv) *Waiver of legal notice by tenant prior to actions for eviction or money judgments.* Agreement by tenant that the landlord may institute suit without any notice to the tenant that the suit has been filed, thus preventing the tenant from defending against the lawsuit.

(v) *Waiver of legal proceedings.* These clauses authorize the landlord to act to evict the tenant or hold or sell the tenant's possessions whenever the landlord determines that a breach of default has occurred, without notice to the tenant or any determination by a court of the rights and liabilities of the parties.

(vi) *Waiver of jury trial.* These clauses authorize the landlord's lawyer to appear in court for the tenant and waive the right to a trial by jury.

(vii) *Waiver of right to appeal judicial error in legal proceedings.* These clauses authorize the landlord's lawyer to waive the right to appeal for judicial error in any suit or the right to file a suit in equity to prevent the execution of a judgment.

(viii) *Tenant chargeable with costs of legal actions regardless of outcome.* These clauses provide that the tenant agrees

to pay attorney's fees or other legal costs whenever the landlord decides to take action against the tenant even though the court determines that the tenant prevails in the action. This does not mean that the tenant as a party to a lawsuit may not be obligated to pay attorney's fees or other costs if he loses the suit.

(f) *Continued family participation.* A family must continue to occupy its approved unit to remain eligible for participation in the Housing Assistance Payments Program except under the following conditions. If the family (1) wishes to vacate its unit at the end of the lease term (or prior thereto but in accordance with the provisions of the lease) in order to move to another approvable unit, or (2) is required to move for reasons other than violation of the lease on the part of the family (as determined by the LHA), and wishes to move to another approvable unit, the family shall be given a new Certificate of Family Participation providing for housing assistance payments for occupancy of such other unit, if:

(i) The family provides reasonable notice (at least 30 days) to the LHA of its intention to vacate;

(ii) The LHA determines that the family is in compliance with the provisions of the lease, including provisions requiring notice to the owner, if applicable;

(iii) The LHA determines that the family continues to be eligible for such assistance;

(iv) The LHA determines that the family is meeting its obligations for repayment of security deposits, if any; and

(v) The LHA has sufficient funds under its Annual Contributions contract.

(g) *Inapplicability of low-rent public housing model lease and grievances procedures.* Model lease and grievances procedures established by HUD for LHA-owned low-rent public housing are not applicable to the section 23 Housing Assistance Payments Program.

(h) *Units not leased to eligible families.* (1) If at any time, beginning six months after the execution of the Contract, the owner fails for a continuous period of three months to have at least 80 percent of the Contract units leased by eligible families, the LHA shall refer to the owner available eligible families interested in leasing units in the project. If the LHA makes such referrals to the owner and the owner refuses to accept such families without good reason, in the judgment of the LHA, the LHA, with HUD approval, may on 30 days notice reduce the number of units under the Contract to not less than 111 percent of

the number of units under lease by eligible families.

(2) As of the end of the initial term of the Contract and of each renewal term, the LHA, with HUD approval, may reduce the number of units under the Contract to not less than 111 percent of (i) the number of units under lease by eligible families at that time or (ii) the average number of units so leased during the last year, whichever is the greater number.

(3) In the event of any reduction in the number of units under the Contract, in accordance with this paragraph, the LHA and HUD shall amend the ACC to reduce the amount of annual contributions payable thereunder to an amount commensurate with the lower number of units covered by the Contract.

§ 1272.218 HUD review of contract compliance.

No later than 6 months after execution of the Housing Assistance Payments Contract for the project, HUD shall review project operations to ensure that the owner and the LHA are in full compliance with the terms and conditions of the Contract. Subsequent reviews shall be scheduled as necessary.

§ 1272.219 LHA reporting requirements. [Reserved]

NOTE: Appendices I, II, and III, which relate to internal HUD processing procedures, are not included herein, but do appear in the HUD New Construction Handbook.

APPENDIX IV

NEW CONSTRUCTION—INVITATION FOR PROPOSALS

The Housing Authority of _____ invites developers and builders to submit proposals for the development of privately owned housing to be assisted by housing assistance payments pursuant to section 23 of the U.S. Housing Act of 1937, as amended.

The number, type, and size of units to be assisted is as follows:

Unit size (number of bedrooms)	Number of units	
	Total	Elderly

The maximum gross rents (including the cost of utilities) which the Housing Authority will consider shall not exceed the following:²

¹ Enter legal name of Local Housing Authority.

² Enter maximum gross rents approved by HUD by unit size and structure type.

Structure Type	Number of units					
	0-BR	1-BR	2-BR	3-BR	4-BR	5-BR

Detailed guidelines, standards and procedures for the development of these units are contained in a Developer's Packet which may be obtained by interested developers and builders from the Housing Authority, whose address is _____

APPENDIX V

MANAGEMENT CAPABILITY AND PROPOSED MANAGEMENT PROGRAM

Owners are required to submit the following information with their proposals to enable the LHA and HUD to evaluate the man-

agement capability of the owner and/or management agent.

1. Name and location of proposed project.
2. Information on owner:

a. Name and address of owner.
b. Name, address and telephone number of person on owner's staff who would be responsible for planning and carrying out owner's overall management responsibilities for the proposed project.

c. List all HUD-assisted projects (including public housing and subsidized and unsubsidized HUD-insured projects) currently or previously owned and/or managed by the owner. For each such project state:

- (1) Name and location of project.
- (2) Dates owned and/or managed.
- (3) Number of units.
- (4) Whether family or elderly.
- (5) If HUD-insured, applicable section of National Housing Act and FHA Case Number.
- (6) If public housing, name of administering Housing Authority.

d. List all other projects, other than HUD-assisted projects, which are presently owned and/or managed by the owner. For each such project, list:

- (1) Name and location of project.
- (2) Dates owned and/or managed.
- (3) Number of units.
- (4) Whether family or elderly.
- (5) Whether administered and/or subsidized by any agency of State or local government, and, if so, name and address of such agency.

e. Give a brief description of the owner's firm, including organizational structure, and a brief description of the owner's organizational arrangements for management of the proposed project, including supervisory relationships, lines of authority, number of personnel in the supervisory, maintenance and clerical categories, and qualifications of key personnel. Include any special factors deemed relevant to management of the proposed project.

f. Give a brief description of procedures to be used in managing the proposed project with regard to the following functions:

- (1) Leasing and tenant selection procedures.
- (2) Rent collections.
- (3) Accounts and records.
- (4) Maintenance and management services.
- (5) Evictions.

g. Provide a statement that the owner will provide all management and maintenance services required by the LHA in the Developer's Packet, and provide a list of those services.

h. If a management agent is to be used, explain organizational relationship between owner and management agent, and specific types of management functions to be performed by each.

3. Information on management agent.
If a management agent is to be used, the following shall be submitted over the signature of such agent:

(a) a statement providing all of the information required to be provided by the owner in items 2a through 2g above;

(b) a statement that the management agent has reviewed the preliminary plans for the proposed project and concurs in them from a management standpoint; and

(c) a copy of the written commitment of the management agent that he has contracted or will contract with the owner to perform the management duties.

4. A statement by the owner and the management agent, if any, that neither one has any identity of interest with the LHA.

APPENDIX VI

LHA REVIEW CHECKLIST FOR SECTION 23 NEW CONSTRUCTION PROPOSALS

(Check all applicable boxes and provide all information requested, even if the proposal

is found unacceptable on the basis of any single item or factor:)

Firm Name _____ Date Received _____

Location of Proposed Project _____
Total Number of Units in Project _____
Total Number to be Assisted _____

Evaluation of Selection Factors

SECTION A:

1. Site(s).
a. The site of the proposed project is in conformance with the special requirements (if any) contained in the LHA's Invitation for Proposals and/or Developer's Packet.

- Yes.
- No (Explain) (if checked no, proposal unacceptable).

b. The site of the proposed project is in conformance with the requirements contained in paragraph 2-9 of the Section 23 New Construction Handbook.

- Yes.
- No (Explain) (if checked no, proposal unacceptable).

c. Site desirability is:

- Superior.
- Adequate.
- Inferior.

2. Design and quality of construction. (If the proposal, including the Preliminary Drawings and Specifications, is not sufficient to verify compliance with design and construction quality requirements, additional information which does not alter the scope of the proposal, may be requested.)

a. The design and quality of construction are in accordance with LHA and HUD requirements specified in the Invitation for Proposals, the Developer's Packet, and the Section 23 New Construction Handbook.

- Yes.
- No (Explain) (if checked no, proposal unacceptable).

b. In relation to the other proposals received, the land use planning and treatment of the proposed site is:

- Superior.
- Adequate.
- Inferior.

c. In relation to the other proposals received, the building layout and unit plans are:

- Superior.
- Adequate.
- Inferior.

d. In relation to the other proposals received, the architectural treatment of structures is:

- Superior.
- Adequate.
- Inferior.

e. In relation to the other proposals received, the quality of construction and materials is:

- Superior.
- Adequate.
- Inferior.

3. Per unit gross rents.

- a. The per unit gross rents are:
 - Below the maximum gross rents published in the Invitation for Proposals.
 - Equal to such maximum gross rents.
 - Above such maximum gross rents (if checked, proposal unacceptable).

b. The proposed rents to owner are reasonable in relation to the quality, location, amenities and management and maintenance services of the proposed project.

- Yes.
- No (Explain).

c. The estimated utility allowances (for tenant-purchased utilities) are reasonable.

- Yes.
- No (Explain).

4. Credentials of the developer, builder and/or owner.

a. The developer, builder, and/or owner have acceptable experience in the develop-

ment and/or construction of housing, or in related fields.

- Yes (Explain).
- No (Explain).

b. The developer, builder, and/or owner have experience in developing housing for low(er) income persons.

- Yes (Explain).
- No.

c. The developer, builder, and/or owner have experience in the type of construction proposed.

- Yes (Explain).
- No.

d. The developer, builder, and/or owner have experience in the development and/or construction of projects at a scale comparable to that of the proposed project.

- Yes (Explain).
- No.

e. The ability of the developer, builder, and/or owner as demonstrated by past performance is:

- Very good.
- Acceptable.
- Not Acceptable (Explain) (if checked not acceptable, proposal unacceptable).

f. There is no identity of interest between the LHA and the owner.

- Yes.
- No (if checked no, proposal unacceptable).

Sec. B. Management responsibilities:

1. The proposal conforms to the Invitation for Proposals, the Developer's Packet, and the Section 23 New Construction Handbook in regard to owner responsibilities for management, maintenance, taxes, insurance, and utilities.

- Yes.
- No (Explain) (if checked no, proposal unacceptable).

2. The management submission contained in the proposal meets all requirements of Appendix V of the Section 23 New Construction Handbook.

- Yes.
- No (Explain).

3. The owner has the necessary experience and/or qualifications to carry out project management and maintenance activities.

- Yes (Explain).
- No (Explain).

4. If the owner proposes to contract with a management agent to carry out management and maintenance responsibilities, such agent has the necessary experience and/or qualifications to carry out such responsibilities.

- Yes (Explain).
- No (Explain).

5. If the owner proposes to contract with the LHA for management, maintenance, or operation of the project, complete the following.

a. The owner has satisfactorily demonstrated that no other competent management agent is available.

- Yes.
- No (Explain).

b. The proposed contract to be entered into with the LHA is acceptable.

- Yes.
- No (Explain).

6. There is no identity of interest between the LHA and the owner or management agent.

- Yes.
- No (if checked no, management submission is unacceptable).

If the owner's management submission is insufficient to enable the LHA to adequately evaluate any items above, the LHA may require the owner to submit additional information.

Sec. C. Compliance with equal opportunity requirements.

1. The owner has submitted an affirmative marketing plan.

- Yes.

RULES AND REGULATIONS

No (Explain) (if checked no, proposal unacceptable).
 2. The required Title VI Assurance and any required Executive Order 11246 certifications have been submitted.

Yes.
 No (Explain).
 3. The potential of the proposal for achieving equal opportunity objectives, relative to all other proposals submitted, is:

- Superior.
- Adequate.
- Inferior.

SEC. D. Employment and utilization of lower income residents and businesses located in or owned in substantial part by persons residing in the project area:

1. The developer's builder's, and/or owner's firm is located in, or owned in substantial part by persons residing in, the project area.

Yes.
 No.

2. An affirmative action plan for utilization of businesses located in or owned in substantial part by persons residing in the project area has been submitted.

Yes.
 No (Explain) (if checked no, proposal unacceptable).

3. The proposal includes information with regard to the number of trainee and employee positions to be filled by lower income project area residents as required by regulations issued pursuant to Section 3 of the Housing and Urban Development Act of 1968.

Yes.
 No (Explain).

4. In relation to other development proposals received, the developer's builder's, and/or owner's plan has the following potential for effectuating the purposes of Section 3 of the Housing and Urban Development Act of 1968:

- Superior.
- Adequate.
- Inferior.

SEC. E. Other:

1. The proposal meets all other requirements of the Invitation for Proposals, Developer's Packet, and the Section 23 New Construction Handbook.

Yes.
 No (Explain) (if checked no, proposal unacceptable).

2. (Complete if proposed project will involve displacement of site occupants.)

a. The estimate of relocation costs submitted with the proposal is accepted.

Yes.
 No (Explain).

b. If the answer to a above is no, the amount of relocation costs as calculated by the LHA is \$_____.

c. The proposal indicates that the developer, builder, and/or owner is/are fully cognizant of HUD relocation requirements under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and will meet those requirements.

Yes.
 No (Explain) (if checked no, proposal unacceptable).

d. Full funding of all relocation costs involved will be provided:

(1) By the developer, builder, and/or owner.

Yes.
 No (Explain).

(2) By other commitments satisfactory to HUD.

Yes (Specify).
 No (Explain).

3. Specify other factors having a bearing upon the ranking assigned to the proposal.

(Signing for the LHA)

Title: _____

Date: _____

Note: Appendix VII, which relates to internal HUD processing procedures, is not included herein, but does appear in the HUD New Construction Handbook.

APPENDIX VIII

NOTIFICATION OF DEVELOPER SELECTION

Date: _____

GENTLEMEN: This will notify you of selection of your proposal, dated _____, to provide _____¹ units of newly constructed housing at _____² of which _____³ units are to be the subject of a contract by this Authority for the making of housing assistance payments on behalf of eligible low-income families leasing such units. The number, size and rents of units to be contracted for are as follows:

Unit size (Number of bedrooms)	Number of units		Rents
	Total	Elderly	

This selection has been approved by the Department of Housing and Urban Development (HUD) and this Authority.

Should you decide to proceed with this undertaking, you will be expected to complete the project, in a manner acceptable to this Authority and HUD, in compliance with: (a) the requirements of the Invitation for Proposals published by this Authority, the Developer's Packet, and your proposal; (b) all applicable State and local laws, codes, ordinances, and regulations as modified by any waivers obtained from the appropriate officials; and (c) the appropriate HUD Minimum Property Standards and the applicable HUD planning and design criteria.

If you accept this Notification, you should submit to this Authority, not later than _____⁴, a certification by the registered architect responsible for the preparation of the working drawings and specifications that they meet the requirements of (a), (b), and (c) of the immediately preceding paragraph.

Upon submission of such certification, an Annual Contributions Contract will be executed by this Authority and HUD. Following such execution, an "Agreement to Enter into Housing Assistance Payments Contract" (Agreement) will be executed by you and this

¹ Insert total number of units to be developed.

² Insert proposed project location. If units are to be developed and leased at more than one location, all such locations should be listed and units and rent summaries prepared for each such location.

³ Insert number of units to be contracted for by the LHA for purposes of making housing assistance payments on behalf of eligible low-income families occupying such units.

⁴ Insert date by which the architect's certification is to be sent to the Housing Authority.

Authority, subject to approval of HUD, which Agreement shall be in accordance with the form of Agreement attached hereto.

[Insert the following if site occupants are to be displaced from the proposed site(s).]

The amount of relocation costs under the Uniform Relocation Assistance and Real Property Acquisition Policies Act calculated by this Authority, and approved by HUD, is \$_____. If you accept this Notification and as a condition to this Authority's entering into an Agreement with you, (1) you will be required to place this amount in an escrow account under the terms of which payments may be made only upon presentation of written authorization by the LHA for the purpose of meeting relocation costs or (2) HUD will have to be satisfied that other commitments have been made for the funding of such costs.

Failure to submit the documents required above within the specified time may result in the Authority's rescinding this Notification.

Your acceptance of this Notification constitutes a certification and agreement that (a) there will not be made any assignment, conveyance, or any other form of transfer of the property, or any interest therein, without the prior written consent of the Authority and HUD, except to a financial institution for the purpose of obtaining financing (an assignment to a limited partnership of which you are the general partner shall not be considered an assignment for this purpose), and (b) no developer or owner shall be substituted for those named in the proposal without the written consent of the Authority and HUD.

Please indicate your acceptance of this Notification by signing in the space provided and returning two copies to this office within ten days of the date of this Notification.

Yours truly,

 Housing Authority

By _____

Accepted: _____

 Title

 Date

Note: Appendix IX, which relates to internal HUD processing procedures, is not included herein, but does appear in the HUD New Construction Handbook.

APPENDIX X

ANNUAL CONTRIBUTIONS CONTRACT

This Annual Contributions Contract (ACC) is entered into as of the _____ day of _____, 19____, by and between the United States of America (herein called the "Government"), pursuant to the United States Housing Act of 1937 (42 U.S.C. 1401, et seq., which Act as amended to the date of this Contract is herein called the "Act") and the Department of Housing and Urban Development Act (42 U.S.C. 3521), and _____ (herein called the "Local Authority"), which is organized and existing under the laws of the State of _____ and is a "public housing agency" as defined in the Act. In consideration of the mutual covenants herein-after set forth, the parties hereto agree as follows:

0.1. Project or Projects. The Local Authority is undertaking to provide decent, safe, and sanitary housing for families of low

income (further defined as "Family" or "Families" in Section 2.2) in privately owned accommodations pursuant to Section 23 of the Act by means of Housing Assistance Payments Contracts ("Contracts") with the persons or entities having the legal right to lease or sublease such housing ("Owners"). Such undertaking may involve an agreement for the use of housing to be constructed ("New Construction"), an agreement for the use of existing housing to be substantially rehabilitated ("Substantial Rehabilitation"), or the use of existing housing without substantial rehabilitation ("Existing Housing"). In each instance, the type of housing and the number and sizes of dwelling units with respect to which a certain maximum Annual Contributions commitment is made shall constitute a Project hereunder and shall be identified by a stated Project number.

0.2. *Part I and Part II of this Annual Contributions Contract.* (a) Certain provisions of this ACC, principally those which are specifically applicable to a designated Project, are contained in Part I. Separate forms of Part I are used for different types of Projects (i.e., New Construction, Substantial Rehabilitation, and Existing Housing). A separate Part I, on the applicable form thereof, has been executed with respect to each Project hereunder, and each such Part I, so executed, constitutes a part of this Contract.

(b) The remaining provisions of this ACC, which are applicable to all Projects hereunder, are contained in Part II, which, although not separately executed, constitutes a part of this ACC.

0.3. *Fiscal Year.* Except for the first Fiscal Year of each Project, there shall be one Fiscal Year for all Projects hereunder. Such established Fiscal Year shall be the 12-month period ending _____ of each calendar year. The first Fiscal Year for each Project shall be as provided in the Part I applicable to such Project.

Local Authority, by: _____

The Government, by: _____

PART I—NEW CONSTRUCTION PROJECT NO. _____

1.1. *The Project.* The Local Authority proposes to enter into a Housing Assistance Payments Contract ("Contract") with respect to newly constructed dwelling units pursuant to an agreement to enter into such Contract ("Agreement") executed prior to the commencement of construction. It is contemplated that the numbers and sizes of units will be as follows:

Size of Unit	Number of Units
_____	_____
_____	_____

The Local Authority shall, to the maximum extent feasible, enter into an Agreement and Contract in accordance with the numbers and sizes of units specified above, but the Local Authority shall not enter into any Agreement or Contract or take any other action which will result in a claim for a total Annual Contribution in respect to the Project in excess of the maximum amount stated in section 1.3(a).

1.2. *Authorization of Actions by Local Authority.* (a) In order to carry out the Project, the Local Authority is authorized to (i) enter into an Agreement, (ii) enter into a Contract, (iii) make housing assistance payments on behalf of Families, and (iv) take all other necessary actions all in accordance with the forms, conditions and requirements prescribed or approved by the Government; Provided, however, that neither the Local Authority nor the Government shall assume any obligation beyond that provided in the

form of Agreement, and in the Contract, approved by the Government.

(b) The Contract shall bear the written approval of the Government.

(c) The Contract shall be for an initial term of not more than five years with provision for renewal for subsequent terms of not more than five years each, but in no event shall the term of the Contract, with respect to any unit, exceed 20 years, subject to the maximum 22 year limitation in Section 1.5.

(d) The Contract may provide for periodic adjustments in the rents chargeable by the Owner; Provided, however, that any such provision shall specify that such adjustments are subject to the following clause:

Limitation. The LHA will make housing assistance payments in increased amounts commensurate with rent adjustments or renegotiations under this Section, but only to the extent possible within the limits of the maximum total amount of Annual Contributions payable under Section 1.3(b)(1) of Part I of the ACC. No commitment is made by the LHA or the Government that such maximum total amount of annual contributions will be increased by reason of any such rent adjustments or renegotiations. However, the Owner may select eligible Families in light of this limitation so that his total receipts (Family rents and housing assistance payments) would be commensurate with the adjusted or renegotiated rents.

1.3 *Annual Contributions.* (a) Notwithstanding any other provisions of this ACC (other than paragraph (c) of this Section) or any provisions of any other contract between the Government and the Local Authority, the Government shall not be obligated to make any Annual Contributions or any other payment in respect to the Project in excess of \$_____; Provided, however, that this amount shall be reduced commensurate with any reduction in the number of units under the Housing Assistance Payments Contract or pursuant to any other provision of this ACC.

(b) Subject to the maximum dollar limitation in paragraph (a) of this Section, the Government shall pay Annual Contributions to the Local Authority in respect to the Project in an amount equal to the sum of the following:

(1) The amount of housing assistance payments payable during the Fiscal Year (see Section 1.4) by the Local Authority pursuant to the Contract, as authorized in Section 1.2.

(2) The allowance, in the amount approved by the Government, for security and utility deposits.

(3) The allowance, in the amount approved by the Government, for preliminary costs of administration.

(4) The allowance, in the amount approved by the Government, for the regular costs of administration.

(c) Subject to the maximum amount stated in paragraph (a) of this Section, the Annual Contribution for any Fiscal Year may include such amount as the Government may determine to be necessary to assure that the low-rent character of the Project will be maintained, which amount shall be credited to an account maintained by the Local Authority or the Government as determined by the Government. To the extent funds are available in said account, the Annual Contribution for any Fiscal Year may exceed the maximum amount stated in paragraph (a) of this Section by such amount, if any, as may be required for increases reflected in the estimates of required annual contributions applicable to such Fiscal Year as approved by the Government in accordance with Section 1.7 below. Any amount remaining in said account after payment of the

last Annual Contribution with respect to the Project shall be applied by the Government as a receipt in accordance with Section 18 of the Act.

(d) The Government will make periodic payments on account of the Annual Contributions upon requisition therefor by the Local Authority in the form prescribed by the Government. Each requisition shall include certifications by the Local Authority that housing assistance payments have been or will be made only with respect to units which:

(1) are under lease by Families at the time such housing assistance payments are made except as otherwise provided in the Contract; and

(2) the Local Authority has inspected or caused to be inspected, pursuant to Section 2.7 of Part II of this ACC, within one year prior to the making of such housing assistance payments.

(e) Following the end of each Fiscal Year, the Local Authority shall promptly pay to the Government, unless other disposition is approved by the Government, the amount, if any, by which the total amount of periodic payments during the Fiscal Year exceeds the total amount of the Annual Contribution payable for such Fiscal Year in accordance with this Section.

1.4. *Fiscal Year.* The Fiscal Year for the Project shall be the Fiscal Year established by Section 0.3 of this Contract; Provided, however, that the first Fiscal Year for the Project shall be the period beginning with the commencement of leasing (i.e., the first day of the month in which the first unit is leased by an eligible Family) and ending on the last day of said established Fiscal Year which is not less than 12 months after commencement of such leasing. If the first Fiscal Year exceeds 12 months, the maximum Annual Contribution in Section 1.3(a) may be adjusted by the addition of the pro rata amount applicable to the period of operation in excess of 12 months.

1.5. *Term of Annual Contributions Contract.* This ACC shall remain in effect so long as the Housing Assistance Payments Contract is in effect; Provided, however, that in no case may this ACC exceed 22 years from the beginning of the first Fiscal Year.

1.6. *Federal and Local Government Approvals.* (a) The making of this ACC and the undertaking by the Government of the Annual Contributions as herein provided has been duly approved on List No. _____ for Annual Contributions Contracts.

(b) The Governing Body of the locality in which the dwelling units are to be located has approved the application of Section 23 of the Act to the locality by resolution or ordinance duly adopted on _____, 19____.

1.7. *Estimate of Required Annual Contributions.* (a) At or about the date of execution of this Part I, the Local Authority shall submit an Initial Estimate of Required Annual Contributions (Preliminary Costs), covering preliminary costs other than security and utility deposits. This submission shall include estimates of costs of administration and nonexpendable equipment up to the beginning of the first Fiscal Year.

(b) Not earlier than 150 days and not later than 90 days prior to the estimated date of the beginning of the first Fiscal Year, the Local Authority shall submit an Initial Estimate of Required Annual Contributions with respect to security and utility deposits. Simultaneously, the Local Authority shall submit an Annual Estimate of Required Annual Contributions for the first Fiscal Year with respect to housing assistance payments and the allowance for the cost of administration.

(c) Not earlier than 150 days and not later than 90 days prior to the beginning of each subsequent Fiscal Year, the Local Authority

shall submit an Annual Estimate of Required Annual Contributions with supporting documentation for any increases in the amount of housing assistance payments or the allowance for the cost of administration.

(d) Any of the above Estimates may be revised to reflect changes in circumstances and available data.

(e) All estimates of Required Annual Contributions and any revisions thereof submitted under this section shall be subject to Government approval.

1.8. *Affirmative Fair Housing Marketing Regulation.* The Local Authority shall require the Owner to comply with the Affirmative Fair Housing Marketing Regulation, including the submission for Government approval of an Affirmative Fair Housing Marketing Plan and compliance with such approved Plan, as if the Owner were expressly subject to said Regulation.

1.9. *Equal Employment Opportunity.* (a) The Local Authority shall incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR, Chapter 60, which is to be performed pursuant to this contract, the following Equal Opportunity clause:

"EQUAL EMPLOYMENT OPPORTUNITY

"During the performance of this contract, the contractor agrees as follows:

"(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, creed, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, creed, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; lay-off or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Local Authority setting forth the provisions of this Equal Opportunity clause.

"(2) The contractor will include all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, creed, sex, or national origin.

"(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the Local Authority advising the said labor union or workers' representative of the contractor's commitments under this Section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

"(4) The contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

"(5) The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the Government and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

"(6) In the event of the contractor's non-compliance with the Equal Opportunity

clause of this contract or with any of the said rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor or as otherwise provided by law.

"(7) The contractor will include the portion of the sentence immediately preceding Paragraph (1) and the provisions of Paragraphs (1) through (7) in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the Government may direct as a means of enforcing such provisions including sanctions for noncompliance: *Provided, however,* That in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Government, the contractor may request the United States to enter into such litigation to protect the interests of the United States."

(b) The Local Authority agrees that it will assist and cooperate actively with the Government and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the Equal Opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the Government and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the Government in the discharge of the Government's primary responsibility for securing compliance.

(c) The Local Authority further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order No. 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and Federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the Equal Opportunity clause as may be imposed upon contractors and subcontractors by the Government or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order.

1.10. *Expeditious Carrying Out of Project.* The Local Authority shall proceed expeditiously with the Project. If the Local Authority fails to proceed expeditiously, and no Agreement with the Owner has yet been entered into, the Government by notice to the Local Authority, may terminate or reduce its obligation hereunder with respect to the Project. If an Agreement has been entered into, and the Local Authority or the Owner is not proceeding expeditiously with the Project, the Government will take appropriate action, including the Governmental action provided for in the Agreement.

1.11. *Failure of Local Authority to Comply with Contract.* (a) In the event of failure of the Local Authority to comply with the Contract with the Owner, or if such Contract is held to be void, voidable or ultra vires, or if the power or right of the Local Authority to enter into such Contract is drawn into question in any legal proceeding, or if the Local Authority asserts or claims that such Agreement or Contract is not binding upon the Local Authority for any such reason, the occurrence of any such event, if the Owner

is not in default, shall constitute a Substantial Default hereunder. In such case, the Government will assume the Local Authority's rights and obligations under such Contract, and the Government shall, for the duration of such Contract, continue to pay Annual Contributions for the purpose of making housing assistance payments with respect to dwelling units under such Contract, shall perform the obligations and enforce the rights of the Local Authority, and shall exercise such other powers as the Government may have to cure the Default.

(b) All rights and obligations of the Local Authority assumed by the Government will be returned as constituted at the time of such return (i) when the Government is satisfied that all defaults have been cured and that the Contract will thereafter be administered in accordance with its terms and the terms of this Annual Contributions Contract, or (ii) when the Housing Assistance Payments Contract is at an end, whichever occurs sooner.

(c) The provisions of this Section 1.11 are made with, and for the benefit of, the Owner or his assignees who will have been specifically approved by the Government prior to such assignment. To enforce the performance of this provision the Owner and such assignees, as well as the Local Authority, shall have the right to proceed against the Government by suit at law or in equity.

Local Authority, by: _____

The Government, by: _____

Date: _____

PART II

Terms and conditions Between Local Authority and the United States of America.

2.1. *Low-Income Housing Use.* The Local Authority shall use the Annual Contributions solely for the purpose of providing decent, safe, and sanitary dwellings for families of low income, hereinafter further defined as "Families."

2.2. *Definitions—(a) Families; Elderly Families; and Displaced Families.* (1) The term "Families" means families of low income and includes Families consisting of a single person in the case of Elderly Families and Displaced Families, and includes the remaining member of a tenant Family.

(2) The term "Elderly Families" means Families whose heads (or their spouses), or whose sole members, have attained the age at which an individual may elect to receive an old-age benefit under Title II of the Social Security Act (42 U.S.C. 301, et seq.); or are under a disability as defined in section 223 of that Act; or are handicapped within the meaning of Section 202 (12 U.S.C. 1701q) of the Housing Act of 1959, as amended.

(3) The term "Displaced Families" means Families displaced by urban renewal or other governmental action, or Families whose present or former dwellings are situated in areas as determined by the Government to have been affected by a natural disaster, and which have been extensively damaged or destroyed as the result of such disaster.

(b) *Project Receipts and Project Expenditures.* (1) "Project Receipts" with respect to each Project shall mean the Annual Contributions payable hereunder and all other receipts, if any, accruing to the Local Authority from, out of, or in connection with such Project.

(2) "Project Expenditures" with respect to each Project shall mean all costs allowable under Section 1.3, Part I of this Contract with respect to such Project.

(c) *Substantial Default.* For the purpose of this ACC a Substantial Default is defined

to be the occurrence of any of the following events:

(1) If the Local Authority defaults in the observance or performance of the provisions of Section 2.7; or

(2) If (a) the Local Authority violates or fails to comply with any provisions of the Housing Assistance Payments Contract or fails to perform any of its obligations under such Contract, or (b) such Contract at any time is held to be void, voidable, or ultra vires, or the power or right of the Local Authority to enter into such Contract is drawn into question in any legal proceeding, or (c) the Local Authority asserts or claims that such Contract is not binding upon it for any reason, or otherwise asserts or demonstrates that it does not intend to fulfill its obligations under such Contract; or

(3) If the Local Authority fails or refuses to honor any duly issued Certificate of Family Participation in accordance with its terms; or

(4) If the Local Authority fails to comply with the requirements of Sections 2.8, 2.9, 2.10, or 2.11; or

(5) If there is any default by the Local Authority in the performance or observance of any term, covenant, or condition of this ACC other than the defaults enumerated in subsections (1) through (4) of this paragraph (c) and if such default has not been remedied within a reasonable time, not to exceed thirty days, after the Government has notified the Local Authority thereof.

2.3. Maximum Income Limits and Rents. (a) Subject to the approval of the Government, the Local Authority shall fix income limits for eligibility and rents after taking into consideration:

(1) The Family size, composition, age, physical handicaps, and other factors which might affect the rent-paying ability of the family, and

(2) The economic factors which affect the financial stability and solvency of the Projects.

(b) Income limits shall restrict eligibility to Families (as defined in Section 2.2) and shall assure the financial solvency of the Projects. Income limits and rents as fixed by the Local Authority shall meet the requirements of applicable local law.

(c) The Local Authority shall submit to the Government for its approval a schedule or schedules of income limits and rents, together with such supporting data and documents as the Government may require.

(d) The Local Authority may at any time review and revise such schedules, and shall review and revise such schedules if the Government determines that changed conditions in the locality make such revisions necessary in achieving the purposes of the Act.

2.4. Admission Policies. (a) The Local Authority shall duly adopt and promulgate, by publication or posting in a conspicuous place for examination by prospective tenants, regulations establishing its policies for the issuance of Certificates of Family Participation. Such regulations must be reasonable and give full consideration to its public responsibility for rehousing Displaced Families, to the applicant's status as a serviceman or veteran or relationship to a serviceman or veteran or to a disabled serviceman or veteran and to the applicant's age or disability, housing conditions, urgency of housing need, and source of income, and shall accord to Families consisting of two or more persons such priority over Families consisting of single persons as the Local Authority determines to be necessary to avoid undue hardship.

(b) The Local Authority shall promptly notify any applicant determined to be ineligible for housing assistance payments of the basis for such determination and provide the applicant upon request, within a reason-

able time after the determination is made, with an opportunity for an informal hearing on such determination. Any applicant determined to be eligible for housing assistance payments shall be given a Certificate of Family Participation or shall be notified of the date when such Certificate will be issued, insofar as such date can be reasonably determined.

2.5. Continued Eligibility. (a) The Local Authority shall periodically reexamine the incomes of Families for whom housing assistance payments are being made; Provided, however, that the length of time between the issuance of a Certificate of Family Participation to a Family subject to yearly reexamination and the first reexamination of such Family may be extended by not more than six months if necessary to fit a reexamination schedule established by the Local Authority.

(b) If, upon such reexamination, it is found that Family income or composition has changed, the portion of rent payable by the Family and the amount of housing assistance payment shall be adjusted accordingly.

(c) If, upon such reexamination, it is found that the income of a Family increased beyond the approved income limits for the Project, housing assistance payments for such Family shall terminate.

2.6. Applications and Certifications. (a) Prior to the issuance of a Certificate of Family Participation to each Family and thereafter on the date established by the Local Authority for each reexamination of the status of such Family, the Local Authority shall obtain a written application, signed by a responsible member of such Family, which application shall set forth all data and information necessary to enable the Local Authority to determine whether the Family meets the conditions of eligibility for housing assistance payments.

(b) The Local Authority shall establish policies governing the nature and extent of investigations to be made of applicants' and tenants' statements relating to their eligibility.

(c) A duly authorized official of the Local Authority shall, at times prescribed by the Government, make written certifications to the Government that each Certificate of Family Participation issued during the period covered by the certification was issued in accordance with its duly adopted regulations and approved income limits.

2.7. Maintenance and Inspections. (a) The Local Authority shall require as a condition for the making of housing assistance payments, that the Owner at all times maintain the Project in decent, safe, and sanitary condition.

(b) The Local Authority shall inspect or cause to be inspected dwelling units prior to commencement of occupancy by Families, and of grounds, facilities, and areas for their benefit and use, and shall make or cause to be made subsequent inspections at least annually, adequate to assure that decent, safe, and sanitary housing accommodations are being provided.

2.8. Nondiscrimination in Housing. (a) The Local Authority shall comply with all requirements imposed by Title VI of the Civil Rights Act of 1964, Public Law 88-352, 78 Stat. 241; the regulations of the Department of Housing and Urban Development issued thereunder, 24 CFR, Subtitle A, Part 1, Section 1.1, *et seq.*; the requirements of said Department pursuant to said regulations; and Executive Order 11063 to the end that, in accordance with that Act and the regulations and requirements of said Department thereunder, and said Executive Order, no person in the United States shall, on the ground of race, color, creed, religion, or national origin, be excluded from participation in, or be denied the benefits of, the Housing Assistance Payments Program or be otherwise

subjected to discrimination. The Local Authority shall, by contractual requirement, covenant, or other binding commitment, assure the same compliance on the part of any subgrantee, contractor, subcontractor, transferee, successor in interest, or other participant in the program or activity, such commitment to include the following clause:

"This provision is included pursuant to the regulations of the Department of Housing and Urban Development, 24 CFR, Subtitle A, Part 1, Section 1.1, *et seq.*; issued under Title VI of the said Civil Rights Act of 1964, and the requirements of said Department pursuant to said regulations; and the obligation of the [contractor or other] to comply therewith inures to the benefit of the United States, the said Department, and the Local Authority any of which shall be entitled to invoke any remedies available by law to redress any breach thereof or to compel compliance therewith by the [contractor or other]."

(b) The Local Authority shall incorporate or cause to be incorporated into all Housing Assistance Payments Contracts a provision requiring compliance with all requirements imposed by Title VIII of the Civil Rights Act of 1968, Public Law 90-284, 82 Stat. 73, and any rules and regulations issued pursuant thereto.

(c) The Local Authority shall not, on account of creed or sex, discriminate in the sale, leasing, rental, or other disposition of housing or related facilities (including land) included in any Project or in the use or occupancy thereof, nor deny to any family the opportunity to apply for such housing, nor deny to any eligible applicant the opportunity to lease or rent any dwelling in any such housing suitable to its needs. No person shall automatically be excluded from participation in or be denied the benefits of the Housing Assistance Payments Program because of membership in a class such as unmarried mothers, recipients of public assistance, etc.

2.9. Equal Employment Opportunity. The Local Authority shall not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, or national origin. The Local Authority shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to race, color, creed, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

2.10. Employment of Project Area Residents and Contractors. The Local Authority shall comply and shall require each of its contractors and subcontractors employed in the performance of this ACC to comply with Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and the regulations and requirements of the Government thereunder, requiring that to the greatest extent feasible opportunities for training and employment be given lower income residents of the Project area and that contracts for work in connection with the Project be awarded to business concerns which are located in or owned in substantial part by persons residing in the area of the Project.

2.11. Cooperation in Equal Opportunity Compliance Reviews. The Local Authority shall cooperate with the Government in the conducting of compliance reviews and complaint investigations pursuant to applicable civil rights statutes, Executive Orders, and rules and regulations pursuant thereto.

2.12. Insurance and Fidelity Bond Coverage. (a) For purposes of protection against

hazards arising out of or in connection with the administrative activities of the Local Authority in carrying out the Project, the Local Authority shall carry adequate (1) comprehensive general liability insurance, (2) workmen's compensation coverage (statutory or voluntary), and (3) automobile liability insurance against property damage and bodily injury (owned and non-owned).

(b) The Local Authority shall obtain or provide for the obtaining of adequate fidelity bond coverage of its officers, agents, or employees handling cash or authorized to sign checks or certify vouchers.

(c) Each insurance policy or bond shall be written to become effective at the time the Local Authority becomes subject to the risk of hazard covered thereby, and shall be continued in full force and effect for such period as the Local Authority is subject to such risk or hazard. Such insurance and bonds shall (1) be payable in such manner, (2) be in such form, and (3) be for such amounts, all as may be determined by the Local Authority and approved by the Government, and shall be obtained from financially sound and responsible insurance companies.

(d) In connection with each policy, including renewals, for comprehensive general liability insurance the Local Authority shall give full opportunity for open and competitive bidding. The Local Authority shall give such publicity to advertisements for bids as will assure adequate competition and shall afford an opportunity to bid to all insurers who have indicated in writing to the Local Authority their desire to submit a bid and who are licensed to do business in the State. Such insurance shall be awarded to the lowest responsible bidder. The lowest bid shall be determined upon the basis of net cost to the Local Authority. Net cost, for the purposes of this subsection (d), shall mean the gross deposit premium, plus the cost of insurance against the hazards, if any, of assessments, less any anticipated dividend based on the dividend payment and assessment record of the insurer for the previous ten years. Nothing in this subsection (d) shall have the effect of requiring the Local Authority to purchase insurance from any insurer not licensed to do business in the State or to purchase insurance which involves any hazard of assessment unless insurance against such hazard is available.

(e) The Local Authority shall require that each liability insurance policy prohibit the insurer from defending any tort claim on the ground of immunity of the Local Authority from suit.

(f) The Local Authority shall submit certified duplicate copies of all insurance policies and bonds to the Government not less than forty-five days before the effective date thereof for review to determine compliance with this ACC. Unless disapproved by the Government within thirty days of the date submitted, the policies and bonds submitted shall be considered as approved by the Government.

(g) If the Local Authority shall fail at any time to obtain and maintain insurance as required by subsections (a), (b), (c), and (d) of this Sec. 2.12, the Government may obtain such insurance on behalf of the Local Authority and the Local Authority shall promptly reimburse the Government for the cost thereof together with interest at the then going Federal rate as determined pursuant to Section 2(10) of the Act.

2.13. Books of Account and Records; Reports; Audits. (a) The Local Authority shall maintain complete and accurate books of account and records, as may be prescribed from time to time by the Government, in connection with the Projects, including records which permit a speedy and effective

audit, and will among other things fully disclose the amount and the disposition by the Local Authority of the Annual Contributions and other Project Receipts, if any.

(b) The books of account and records of the Local Authority shall be maintained for each Project as separate and distinct from all other Projects and undertakings of the Local Authority, except as authorized or approved by the Government.

(c) The Local Authority shall furnish the Government such financial, operating, and statistical reports, records, statements, and documents at such times, in such form, and accompanied by such supporting data, all as may reasonably be required from time to time by the Government.

(d) The Government and the Comptroller General of the United States, or his duly authorized representatives, shall have full and free access to the Projects and to all the books, documents, papers, and records of the local Authority that are pertinent to its operations with respect to financial assistance under the Act, including the right to audit, and to make excerpts and transcripts from such books and records.

(e) The Local Authority shall incorporate or cause to be incorporated in all Contracts the following clause:

"LHA AND GOVERNMENT ACCESS TO PREMISES AND OWNER'S RECORDS

"The Owner shall permit the Local Authority and the Government or any of their duly authorized representatives, to have access to the premises and, for the purpose of audit and examination, to have access to any books, documents, papers and records of the Owner that are pertinent to compliance with this Contract, including the verification of information pertinent to the monthly requests to the Local Authority for housing assistance payments."

(f) The Local Authority shall not charge as a Project Expenditure the cost or expense of any audit with respect to any Project for any Fiscal Year unless (1) the Government has approved such audit, or (2) such audit is required by law, or (3) the Government has failed to furnish the Local Authority with a report of its fiscal audit of the Local Authority's books of account for such Fiscal Year within six months after the end thereof and, subsequent to a notice by the Local Authority of such failure, the Government has failed to submit its report of such audit within three months after receipt of such notice.

2.14. General Depository Agreement and General Fund. (a) Promptly after the execution of this ACC, the Local Authority shall enter into, and thereafter maintain, one or more agreements, which are herein collectively called the "General Depository Agreement," in form prescribed by the Government, with one or more banks (each of which shall be, and continue to be, a member of the Federal Deposit Insurance Corporation) selected as depository by the Local Authority. Immediately upon the execution of any General Depository Agreement, the Local Authority shall furnish to the Government such executed or conformed copies thereof as the Government may require. No such General Depository Agreement shall be terminated except after thirty days notice to the Government.

(b) All monies received by or held for account of the Local Authority in connection with the Projects shall constitute the General Fund.

(c) The Local Authority shall, except as otherwise provided in this Contract, deposit promptly with such bank or banks, under the terms of the General Depository Agreement, all monies constituting the General Fund.

(d) The Local Authority may withdraw monies from the General Fund only for (1) the payment of Project Expenditures, and (2) other purposes specifically approved by the Government. No withdrawals shall be made except in accordance with a voucher or vouchers then on file in the office of the Local Authority stating in proper detail the purpose for which such withdrawal is made.

(e) If the Local Authority (1) in the determination of the Government, is in Substantial Default, or (2) makes or has made any fraudulent or willful misrepresentation of any material fact in any of the documents or data submitted to the Government pursuant to this ACC or in any document or data submitted to the Government as a basis for this Contract or as an inducement to the Government to enter into this Contract, the Government shall have the right to require any bank or other depository which holds any monies of the General Fund, to refuse to permit any withdrawals of such monies; Provided, however, that upon the curing of such Default the Government shall promptly rescind such requirement.

2.15. Pooling of Funds under Special Conditions and Revolving Fund. (a) The Local Authority may deposit under the terms of the General Depository Agreement monies received or held by the Local Authority in connection with any other housing project developed or operated by the Local Authority pursuant to the provisions of any contract for annual contributions, administration, or lease between the Local Authority and the Government.

(b) The Local Authority may also deposit under the terms of the General Depository Agreement amounts necessary for current expenditures of any other project or enterprise of the Local Authority, including any project or enterprise in which the Government has no financial interest; Provided, however, that such deposits shall be lump-sum transfers from the depositories of such other projects or enterprises, and shall in no event be deposits of the direct revenues or receipts of such other projects or enterprises.

(c) If the Local Authority operates other projects or enterprises in which the Government has no financial interest it may, from time to time, withdraw such amounts as the Government may approve from monies on deposit under the General Depository Agreement for deposit in and disbursement from a revolving fund provided for the payment of items chargeable in part to the Projects and in part to other projects or enterprises of the Local Authority; Provided, however, that all deposits in such revolving fund shall be lump sum transfers from the depositories of the related projects or enterprises and shall in no event be deposits of the direct revenues or receipts.

(d) The Local Authority may establish petty cash or change funds in reasonable amounts, from monies on deposit under the General Depository Agreement.

(e) In no event shall the Local Authority withdraw from any of the funds or accounts authorized under this Section 2.15 amounts for the Projects or for any other project or enterprise in excess of the amount then on deposit in respect thereto.

2.16. Assignment of Interest in Project to Government; Continuance of Annual Contributions. Upon the occurrence of a Substantial Default (as herein defined) with respect to any Project the Local Authority shall if the Government so requires, assign to the Government all of its rights and interests in and to the Project, or such part thereof as the Government may specify, and the Government shall continue to pay Annual Contributions with respect to dwelling units covered by Housing Assistance Payments Contracts in accordance with the terms of this ACC until reassigned to the

Local Authority. After the Government shall be satisfied that all defaults with respect to the Project have been cured and that the Project will thereafter be operated in accordance with the terms of this ACC, the Government shall reassign to the Local Authority all of the rights and interests of the Government in and to the Project as such rights and interests exist at the time of such reassignment.

2.17. Remedies not Exclusive and Non-Waivers of Remedies. Any remedy provided for herein shall not be exclusive or preclude the Owner, LHA and/or the Government from exercising any other remedy available under this ACC or under any provisions of law, nor shall any action taken in the exercise of any remedy be deemed a waiver of any other rights or remedies available to such parties. Failure on the part of any such party to exercise any right or remedy shall not constitute a waiver of that or any other right or remedy, nor operate to deprive the party of the right thereafter to take any remedial action for the same or any subsequent default.

2.18. Interest of Members, Officers, or Employees of Local Authority, Members of Local Governing Body, or Other Public Officials. (a) Neither the Local Authority nor any of its contractors or their subcontractors shall enter into any contract, subcontract, or arrangement, in connection with any Project, in which any member, officer, or employee of the Local Authority, or any member of the governing body of the locality in which the Project is situated, or any member of the governing body of the locality in which the Authority was activated, or any other public official of such locality or localities who exercises any responsibilities or functions with respect to the Project during his tenure or for one year thereafter has any interest, direct or indirect. If any such present or former member, officer, or employee of the Local Authority, or any such governing body member or such other public official of such locality or localities involuntarily acquires or had acquired prior to the beginning of his tenure any such interest, and if such interest is immediately disclosed to the Local Authority and such disclosure is entered upon the minutes of the Local Authority, the Local Authority, with the prior approval of the Government may waive the prohibition contained in this subsection; Provided, however, that any such present member, officer, or employee of the Local Authority shall not participate in any action by the Local Authority relating to such contract, subcontract, or arrangement.

(b) The Local Authority shall insert in all contracts entered into in connection with any Project or any property included or planned to be included in any Project, and shall require its contractors to insert in each of its subcontracts, the following provisions:

"No member, officer, or employee of the Local Authority, no member of the governing body of the locality in which the Project is situated, no member of the governing body of the locality in which the Local Authority was activated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the Project, during his tenure or for one year thereafter, shall have any interest, direct or indirect, in this contract or the proceeds thereof."

(c) The provisions of the foregoing subsections (a) and (b) of this Section 2.18 shall not be applicable to the General Depository Agreement, or utility service the rates for which are fixed or controlled by a governmental agency.

2.19. Interest of Member of or Delegate to Congress. No member of or delegate to the

Congress of the United States of America or resident commissioner shall be admitted to any share or part of this Contract or to any benefits which may arise therefrom.

APPENDIX XI

AGREEMENT TO ENTER INTO HOUSING ASSISTANCE PAYMENTS CONTRACT

This Agreement to Enter into Housing Assistance Payments Contract ("Agreement") is made and entered into this _____ day of _____, 19____, by and between the _____ ("LHA"), a body, corporate and politic, organized and existing under and by virtue of the laws of the State of _____, and _____ ("Owner").

WHEREAS, the Owner proposes to complete a housing Project consisting of improvements and land (as described in the developer's approved proposal, including any approved modifications, attached hereto as Exhibit "A"); and

WHEREAS, the Owner and the LHA propose to enter into a Housing Assistance Payments Contract ("Contract"), which is attached hereto as Exhibit "B", upon the completion of said Project, for the purpose of making housing assistance payments to enable eligible low-income families ("Families") to occupy units in said Project, which units are as described in Exhibit "C", attached hereto; and

WHEREAS, the LHA has entered into an Annual Contributions Contract dated _____, 19____, with the United States of America (hereinafter called the "Government"), with respect to Project No. _____ ("ACC"), under which the Government will provide financial assistance to the LHA pursuant to Section 23 of the United States Housing Act of 1937 for the purpose of making housing assistance payments, which ACC is attached hereto as Exhibit "D"; and

WHEREAS, the developer of this Project is the Owner. (Name of developer if he is not the Owner) _____

NOW THEREFORE, the parties hereto agree as follows:

1. *The Improvements.* The completed improvements shall be in accordance with Exhibit "A". The Owner shall be solely responsible for completion of the improvements and nothing contained in this Agreement shall create or affect any relationship between the LHA and the lender or any contractors or subcontractors employed by the Owner in the completion thereof.

2. *Time for completion.* a. The Project shall be completed in accordance with Section 4 no later than _____ days after the date of this Agreement or in stages as provided for in Exhibit "E", which identifies the units comprising each stage and the dates for commencement and completion of each stage. Where completion in stages is provided for, all references to Project completion shall be deemed to refer to Project completion and/or completion of any stage, as appropriate.

The Owner agrees that no later than _____, 19____, the work will be commenced and diligently continued. The LHA reserves the right to cancel this Agreement, subject to Government approval, in the event the work is not commenced and/or diligently continued as aforesaid.

b. In the event that there is delay in the completion due to strikes, lockouts, labor union disputes, fire, unusual delay in transportation, unavoidable casualties, weather, acts of God or any other causes beyond the Owner's control, or by delay authorized by the LHA, the time for completion shall be extended to the extent that completion is delayed due to one or more of these causes.

3. *Changes during construction.* The LHA, with Government approval, may reduce the rents payable to the Owner if deviations from

Exhibit "A" alter the Project design or quality or other basis for proposal selection. Accordingly, the Owner shall obtain prior written approval for any such changes from the LHA and the Government.

4. *Project completion: Execution of housing assistance payments contract.*—a. *Notification of Completion.* Upon completion of the Project, the Owner shall notify the LHA and the Government that the Project is completed and submit to the LHA the evidence of completion described in paragraph b, below.

b. *Evidence of Completion.* The completion of the Project shall be evidenced by furnishing the LHA with the following:

(1) a set of "as-built" drawings; and
(2) a certificate of occupancy and/or other official approvals necessary for occupancy; and

(3) separate certifications by the registered Architect responsible for the preparation of the working drawings and specifications and by the Owner that:

(a) all work has been completed in accordance with the terms and conditions of this Agreement;

(b) the Project is in good and tenable condition; and

(c) there are no defects or deficiencies in the Project, except for ordinary punchlist items. If there are punchlist items the Owner shall, as agreed to by the Owner, the LHA and the Government, make a deposit in escrow to cover such items. In such case, if the Owner fails to complete the punchlist items within a reasonable time to the satisfaction of the LHA, the LHA may, upon 30 days notice and with the approval of the Government, terminate the Housing Assistance Payments Contract.

c. *Inspection.* (1) Within ten working days of the receipt of the Owner's notification of Project completion, the LHA, accompanied by a Government representative, shall inspect the Project and review the evidence of completion listed in paragraph b, above. The Government shall as promptly as possible, advise the LHA in writing as to whether or not the Project has been satisfactorily completed and whether the requirements of paragraph (d) (1) of this Section have been complied with.

(2) If it is determined that the Project has not been satisfactorily completed, the Government shall notify the LHA and advise it of the corrective action needed. In the event the Owner disputes such a determination he may submit the controversy to third-party arbitration at his expense; provided that the arbitration is advisory only. Prior to authorizing execution of the Contract, the Government shall verify that appropriate corrective action has been taken.

d. *Execution of Housing Assistance Payments Contract.* (1) Prior to the Government's authorization of execution of the Contract, the Owner must certify in writing that there has been no change in the evidence of management capability and proposed management program as specified in his proposal other than changes approved in writing by the LHA and the Government in accordance with Section 3 of this Agreement.

(2) If the Government determines that the Project has been satisfactorily completed in accordance with the provisions of this Section and approves such certification and the changes, if any, as to the evidence of management capability and management program, the Government shall authorize execution of the Contract.

5. *Selection and certification of families.* a. Marketing by the Owner and determination of Family eligibility and approval of Owner-Family Leases by the LHA shall begin no later than 90 days prior to Project completion and be accomplished to achieve rapid occupancy.

RULES AND REGULATIONS

b. The Owner shall be responsible for the selection of Families subject to certification of eligibility by the LHA. In the selection of Families, the Owner shall comply with the Government-approved Affirmative Fair Housing Marketing Plan, which is attached to the Contract and with the applicable LHA admission regulations. Both the Owner and the LHA shall comply with the requirements set forth in Section 10 of the Contract with respect to nondiscrimination in housing.

c. The Owner shall request the LHA, in accordance with procedures to be agreed upon between the Owner and the LHA, to make certifications of eligibility of selected Families and to approve proposed Owner-Family Leases. Within _____ days of the submission of any such request to the LHA or the submission of additional information required by the LHA from the Owner, the LHA shall furnish the Owner with a determination or a statement that specified additional information is required from the Owner to enable the LHA to make its determination. If the LHA delays in furnishing a determination or statement within said time limit and such delay results in an eligible unit remaining vacant, the Owner shall be entitled to housing assistance payments for the number of days of vacancy directly due to such delay.

6. *Housing Assistance Payments contract.*
a. Upon receipt by the LHA of the Government's authorization, the Owner and the LHA shall execute the Contract. If completion is in stages, pursuant to Section 2a, the Contract shall be executed upon completion of the first stage, and the number and types of completed units and their Contract rents shall be shown in Schedule A-1 of the Contract. Thereafter, upon completion of each successive stage, the signature block provided in the Contract for that stage shall be executed by the Owner and the LHA and approved by the Government, and Schedule A-2, A-3, etc., covering the additional units, shall become part of the Contract effective as of the date of such execution.

b. The rents to the Owner, by unit size, amounts of housing assistance payments, and all other applicable terms and conditions shall be as specified in the proposed Housing Assistance Payments Contract, except that in no case may rents for projects financed with mortgages insured under the National Housing Act exceed the rent formula rents established by the Government in connection with the mortgage insurance for such projects.

c. Each party has read or is presumed to have read the proposed Contract. It is expressly agreed that there shall be no change in the terms and conditions of the Contract other than in accordance with Sections 3 and 6b of this Agreement.

7. *Relocation Requirements.*

a. The Owner hereby certifies that the site of the Project was without occupants as of the date of the "Notification of Developer Selection" by checking "yes" below.

Yes.

No.

b. If the answer to paragraph a above is "no", paragraph c or d below shall be applicable.

c. The Government has determined that satisfactory commitments have been made for the funding of relocation costs pursuant to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as follows:

d. If paragraph c is inapplicable, the Owner hereby agrees to comply with the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and applicable Government regulations and requirements issued pursuant thereto, and the following shall apply:

(1) The maximum potential amount of all relocation costs as calculated by the LHA and approved by the Government is \$_____.

(2) The Owner has deposited this amount in an escrow account under the terms of which payments may be made only upon presentation of written authorization by the LHA for the purpose of meeting relocation costs.

(3) The Owner hereby voluntarily undertakes liability for all relocation costs with respect to site occupants and agrees that if the funds in the escrow account shall prove to be insufficient to meet all such relocation costs, he will deposit such additional amounts as the LHA determines to be necessary for such purpose.

(4) When the LHA determines, with Government approval, that there is no longer any potential liability for relocation costs, any balance in the escrow account shall be paid to the Owner.

(5) The Owner agrees to hold harmless and to indemnify the LHA for any costs incurred under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 in connection with the relocation of site occupants, and the Owner further agrees that the LHA shall have the right to be reimbursed for any such costs by withholding from housing assistance payments payable to the Owner.

8. *Employment of project area residents and contractors.* The Owner shall comply and shall require each of its contractors and subcontractors employed in the performance of this Contract to comply (including compliance with the Government-approved affirmative action plan for utilization of Project area businesses) with Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and the regulations and requirements of the Government thereunder, requiring that, to the greatest extent feasible, opportunities for training and employment be given lower income residents of the Project area and that contracts for work in connection with the Project be awarded to business concerns which are located in or owned in substantial part by persons residing in the area of the Project.

9. *Equal Employment opportunity.* a. The Owner shall incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR, Chapter 60, which is to be performed pursuant to this Agreement, the following Equal Opportunity clause:

"EQUAL EMPLOYMENT OPPORTUNITY"

"During the performance of this contract, the contractor agrees as follows:

"(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, creed, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Local Authority setting forth the provisions of this Equal Opportunity clause.

"(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, creed, sex, or national origin.

"(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agree-

ment or other contract or understanding, a notice to be provided by the Local Authority advising the said labor union or workers' representative of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

"(4) The contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

"(5) The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the Government and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

"(6) In the event of the contractor's non-compliance with the Equal Opportunity clauses of this contract or with any of the said rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor or as otherwise provided by law.

"(7) The contractor will include the portion of the sentence immediately preceding Paragraph (1) and the provisions of Paragraphs (1) through (7) in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the Government may direct as a means of enforcing such provisions including sanctions for noncompliance: *Provided, however,* That in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Government, the contractor may request the United States to enter into such litigation to protect the interest of the United States."

b. The Owner agrees that he will be bound by the above Equal Opportunity clause with respect to his own employment practices when he participates in federally assisted construction work.

c. The Owner agrees that he will assist and cooperate actively with the Government and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the Equal Opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that he will furnish the Government and the Secretary of Labor such information as they may require for the supervision of such compliance, and that he will otherwise assist the Government in the discharge of the Government's primary responsibility for securing compliance.

d. The Owner further agrees that he will refrain from entering into any contract or contract modification subject to Executive Order No. 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the Equal Opportunity clause as may be imposed upon contractors and subcontractors by the Government or

the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order.

10. *Cooperation in equal opportunity compliance reviews.* The LHA and the Owner shall cooperate with the Government in the conducting of compliance reviews and complaint investigations pursuant to applicable civil rights statutes, Executive Orders, and rules and regulations pursuant thereto.

11. *Disputes.* a. Except as otherwise provided herein, any dispute concerning a question of fact arising under this Agreement which is not disposed of by agreement of the LHA and Owner may be submitted by either party to the Government which shall make a decision and shall mail or otherwise furnish a written copy thereof to the Owner and the LHA.

b. The decision of the Government shall be final and conclusive unless, within 30 days from the date of receipt of such copy, either party mails or otherwise furnishes to the Government a written appeal addressed to the Secretary of Housing and Urban Development. The decision of the Secretary or his duly authorized representative for the determination of such appeals shall be final and conclusive, unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal proceeding under this Section, the appellant shall be afforded an opportunity to be heard and to offer evidence in support of his appeal. Pending final decision of a dispute hereunder, both parties shall proceed diligently with the performance of the Agreement and in accordance with the decision of the Government.

c. This "Disputes" section does not preclude consideration of questions of law in connection with decisions rendered under paragraph a of this Section; Provided, however, that nothing herein shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

12. *Flood insurance.* If the Project is located in an area that has been identified by the Secretary of Housing and Urban Development as an area having special flood hazards and if the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, the Owner agrees that the Project will be covered, during its anticipated economic or useful life, by flood insurance in an amount at least equal to its development or project cost (less estimated land cost) or to the maximum limit of coverage made available with respect to the particular type of property under the National Flood Insurance Act of 1968, whichever is less.

13. *Interest of members, officers, or employees of LHA, members of local governing body, or other public officials.* No member, officer, or employee of the LHA, no member of the governing body of the locality (city and county) in which the Project is situated, no member of the governing body of the locality in which the LHA was activated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the Project, during his tenure or for one year thereafter, shall have any interest, direct or indirect, in this Agreement or in any proceeds or benefits arising therefrom.

14. *Interest of member of or delegate to Congress.* No member of or delegate to the Congress of the United States of America or resident commissioner shall be admitted to any share or part of this Agreement or to any benefits which may arise therefrom.

15. *Nonassignability.* a. The Owner agrees that he has not made, and will not make any sale, assignment, or conveyance or trans-

fer in any other form of this Agreement or the Project, or any part thereof, or any of his interests therein, except as follows:

(1) with the prior consent of the LHA and the Government;

(2) to a financial institution or trustee for the purpose of obtaining financing of the Premises, to which assignment the LHA and the Government shall consent in writing if requested by the Owner or the lender.

The assignment by the Owner of the Agreement to a limited partnership of which the Owner is the general partner shall not be considered an assignment herein.

b. The Owner agrees that he will not change to a different developer from the one named in the preamble of this Agreement, except with the prior consent of the LHA and the Government.

c. The Owner agrees that the approved developer has not made, and will not make, except with the prior consent of the LHA and the Government, any assignment or transfer in any form of the developer's contract to construct the Premises, or of any part thereof, or any of the developer's interests therein.

d. The Owner agrees to notify the LHA and the Government promptly of any proposed action covered by this Section. The Owner further agrees to request the written consent of the LHA and the Government except where the proposed action is covered by paragraph a (2) of this Section.

e. For the purpose of this Section, a transfer of stock in the Owner or developer in whole or in part, by a party holding ten percent or more of the stock of said Owner or developer, or any other similarly significant change in the ownership of such stock or in the relative distribution thereof, or with respect to parties in control of the Owner or developer or the degree thereof, by any other method or means, whether by increased capitalization, merger with another corporation, corporate or other amendments, issuance of new or additional stock or classification of stock or otherwise, shall be deemed an assignment, conveyance, or transfer with respect to this Agreement, the Premises, or the construction contract. With respect to this provision, the Owner, and the party signing this Agreement on behalf of said Owner, represent that they have the authority of all of the existing stockholders of the Owner to agree to this provision on behalf of said stockholders and to bind them with respect thereto.

16. *Authority of the LHA.* The LHA warrants that it is a duly organized body, corporate and politic, authorized by law to engage in the development or administration of low-rent housing or slum clearance, and that it is in fact and in law authorized to execute this Agreement.

17. *Annual contributions contract.* The execution of the ACC by the Government signifies that said ACC has been properly authorized; that the faith of the United States is solemnly pledged to the payment of annual contributions pursuant to said ACC; and that funds have been obligated by the Government for such payment to assist the LHA in the performance of its obligations under the Housing Assistance Payments Contract. The LHA shall not, without the consent of the Owner, amend or modify the ACC in any manner which would reduce the amount of annual contributions payable under Section 1.3b(1) thereof with respect to the Project, except as authorized in the ACC and the Housing Assistance Payments Contract.

18. *Prohibited methods of financing.* If any of the methods of financing prohibited by the Housing Assistance Payments Program is used, (a) the LHA shall be under no obligation to enter into the Housing Assistance Payments Contract and (b) the LHA shall not be entitled to annual contributions with respect to the Project.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in four original counterparts as of the day and year first above written.

LHA

By _____

OWNER

By _____

WARNING: 18 U.S.C. 1001 provides, among other things, that whoever knowingly or willfully makes or uses a document or writing containing any false, fictitious, or fraudulent statement or entry, in any matter within the jurisdiction of any department or agency of the United States, shall be fined not more than \$10,000 or imprisoned for not more than five years, or both.

APPENDIX XII

HOUSING ASSISTANCE PAYMENTS CONTRACTS

This Housing Assistance Payments Contract ("Contract") is made and entered into on this _____ day of _____ 19____, by and between _____ ("Owner") and _____ ("LHA") a public body, corporate and politic, organized and existing under and by virtue of the laws of the State of _____

The Owner and the LHA agree as follows:

1. *Purpose of contract.* a. The LHA hereby agrees to make housing assistance payments on behalf of eligible low-income families ("Families") for the number and type of units specified in Schedule "A", attached hereto ("assisted units"), to enable such Families to lease decent, safe, and sanitary housing pursuant to Section 23 of the United States Housing Act of 1937.

b. The assisted units are to be leased by the Owner to Families for use and occupancy by such Families solely as private dwellings.

2. *Annual contributions contract.* a. The LHA has entered into an Annual Contributions Contract dated _____, with the United States of America (hereinafter called the "Government"), with respect to Project No. _____ ("ACC"), under which the Government will provide financial assistance to the LHA pursuant to Section 23 of the United States Housing Act of 1937, for the purpose of making housing assistance payments, which ACC is attached hereto.

b. The LHA hereby pledges such annual contributions payable under Section 1.3(b) (1) of Part I of the ACC to the payment of housing assistance payments pursuant to the Housing Assistance Payments Contract. The LHA shall not, without the consent of the Owner, amend or modify the ACC in any manner which would reduce the amount of such annual contributions, except as authorized in the ACC and this Contract.

3. *Housing assistance payments.* a. Housing assistance payments shall be made by the LHA to the Owner, under the terms and conditions of this Contract, for the period during which assisted units are leased by Families under Leases approved by the LHA. Housing assistance payments shall not be made for units which are vacant except:

(1) As provided in Section 9b, below, or in Section 5c of the Agreement to Enter into Housing Assistance Payments Contract ("Agreement"); and

(2) Where a Family vacates its unit in violation of the provisions of its Lease, in which case, the Owner may continue to receive housing assistance payments with respect to such unit in accordance with the terms of the Contract, not beyond the term

of the Lease, but only if the Owner (a) immediately upon learning of the vacancy, has taken all feasible action to fill it including but not limited to contacting families on his waiting list, requesting the LHA to refer eligible Families and advertising the availability of the unit, (b) has promptly (within 30 days of the date the family vacated the unit) notified the LHA of the vacancy and (c) has not rejected, except for good cause acceptable to the LHA, any substitute Family provided by the LHA.

b. Housing assistance payments shall not be made for units which are leased to other than eligible Families. Housing assistance payments shall be subject to abatement in whole or in part as provided in Section 4d below.

c. Housing assistance payments shall equal the difference between the rents for the units leased by Families as set forth in Schedule "A" and the amounts of such rents payable by Families (if the Project is financed with a mortgage insured under the National Housing Act, the Schedule "A" rents shall not exceed the rent formula rents established by the Government in connection with such mortgage insurance). The LHA shall determine the eligibility of Families and the amount of rentals and other charges to be paid by each Family to the Owner in accordance with standards applicable to the Housing Assistance Payments Program. The amount of housing assistance payment payable on behalf of a Family and the amount of rent payable by such Family shall be subject to change by reason of changes in Family income or composition, as determined by the LHA, effective as of the date stated in a notification of such change by the LHA to the Owner and the Family. However, any increase in the amount payable by the Family shall be offset by a corresponding decrease in the amount of housing assistance payment; and any decrease in the amount payable by the Family shall be offset by a corresponding increase in the amount of housing assistance payment, but not in excess of the amount payable under Section 1.3(b) (1) of Part I of the ACC.

d. Neither the LHA nor the Government has assumed any obligation whatsoever for the amount of rent payable by the Family or the satisfaction of any claim by the Owner against the Family. The financial obligation of the LHA is limited to making housing assistance payments on behalf of the Family in accordance with this Contract.

e. (1) The Owner shall submit monthly requests to the LHA for housing assistance payments. Each such request shall set forth: (a) the name of each Family and the address and/or number of the unit leased by the Family; (b) the rent as set forth in Schedule "A" for each leased unit and the amount of rent payable by the Family leasing the unit; and (c) the amount of housing assistance payment requested by the Owner. Upon the determination of the LHA that the amount of the request is correct and that the Owner is in compliance with the provisions of this Contract, the LHA shall pay to the Owner the amount of housing assistance payment requested, but not in excess of the amount payable under Section 1.3(b) (1) of Part I of the ACC.

(2) If the Owner has received an excessive payment, the LHA, in addition to any other rights to recovery, may deduct the amount from any subsequent payment or payments.

(3) The statements set forth in each of the Owner's monthly requests for housing assistance payments shall be made subject to penalty under 18 U.S.C. 1001, which provides, among other things, that whoever knowingly and willfully makes or uses a document or writing containing any false, fictitious, or fraudulent statement or entry, in any matter within the jurisdiction of any

department or agency of the United States shall be fined not more than \$10,000 or imprisoned for not more than five years or both.

4. *The premises*—a. *Definition*. The term "Premises", as used in this Contract, means units which are leased by eligible Families and areas, facilities and grounds which are for their benefit or use, as described in the "Property Description" attached hereto.

b. *Legal Interest*. The Owner warrants that he has the legal right to execute this Contract and to lease dwelling units in the Premises.

c. *Owner's Warranty of Condition of Premises*. The Owner warrants that the Premises have been completed or conditionally accepted by the LHA and the Government in accordance with the Agreement applicable to the Premises.

d. *Maintenance and Operation of Premises*. The Owner agrees (1) to maintain and operate the Premises so as to provide decent, safe, and sanitary housing, and (2) to provide the following services (including security) and maintenance: [here insert the complete list as contained in the Government-approved proposal].

If, at any time during any term of this Contract, the Owner fails to comply with the obligation in (1) with respect to any unit leased by an eligible Family, housing assistance payments on behalf of such Family shall be wholly abated; and if the Owner fails to comply with the obligation in (2) with respect to any unit leased by an eligible Family, housing assistance payments on behalf of such Family shall be abated in whole or in part. Any abatement under this paragraph shall be effective upon written notification to the Owner, and shall continue until such time as the obligation is complied with. The LHA shall promptly notify the Family of any such abatement.

e. *LHA Inspections*. (1) Prior to occupancy of any unit by an eligible Family, the LHA shall inspect the unit, or cause it to be inspected, to determine that the unit is in decent, safe, and sanitary condition.

(2) The LHA will inspect the Premises or cause them to be inspected, at least annually, to determine that they are in decent, safe, and sanitary condition.

5. *Term of contract*. a. The initial term of this Contract shall be _____ years (not to exceed five years) beginning _____, 19____, and ending _____, 19____. This Contract shall be renewed, at the option of the Owner, for an additional term(s) of _____ years (not to exceed five years each), provided that the total Contract term for any unit, including renewals, shall not exceed 20 years. Renewals shall be automatic unless: (1) the Owner notifies the LHA, no later than 60 days prior to the expiration of the current term, of intention not to renew or to request a rent renegotiation pursuant to Section 6c below; or (2) the LHA notifies the Owner, no later than 30 days prior to the expiration of the current term, that he is in Default, as defined in Section 18 below. The term of any Owner-Family Lease, including renewals, if any, shall not extend beyond the term of this Contract.

b. If the Project is accepted in stages, the dates for the initial term and renewal terms shall be separately related to the units in each stage; Provided, however, that in no case may the total Contract term for units in all the stages exceed 22 years from the beginning of the first fiscal year under the ACC.

6. *Rent Adjustments*. Contract rents shall be adjusted, subject to the limitations contained in subsections d and e, below, as follows:

a. *Automatic Annual Adjustments*. (1) On each anniversary date of the Contract, the

monthly rents shown in the Contract shall be adjusted automatically by applying, as an adjustment factor, the Government determined percentage change in the fair market rent for existing housing for the market area in which the Premises are located; provided that the adjustment factor determination is not more than one year old.

(2) Rents may be adjusted upward or downward, as may be appropriate; however, in no case shall the adjusted rents be less than the rents set forth in the Contract on the date of execution of the Contract.

b. *Special Additional Adjustments*. Special additional adjustments may be granted when approved by the Secretary of Housing and Urban Development for substantial, general increases in property taxes and/or utility rates but only if and to the extent that the Owner clearly demonstrates that such general increases have caused increases in the Owner's operating costs which are not adequately compensated for by automatic annual adjustments.

c. *Renegotiations*. The then current rents contained in the Contract may only be renegotiated to become effective at the beginning of the sixth, eleventh, and sixteenth years of the Contract (if the Contract is renewed for that length of time), whether or not such effective date of renegotiation coincides with the beginning of a renewal term. Rents may be renegotiated above the rents which would be permitted by the automatic annual adjustment and/or any special additional adjustment, if the Owner submits to the Government financial statements which clearly support the increase. The Government shall review such statements and may approve rents which reflect reasonable amounts for operation of the Premises and return on investment in comparison with comparable rental projects of the same age. Renegotiated rents shall not be applied retroactively.

d. *Projects Financed With Mortgages Insured Under The National Housing Act*. Notwithstanding any other provisions of this Contract, in no case may rents for projects financed with mortgages insured under the National Housing Act exceed the rent formula rents established by the Government in connection with the mortgage insurance for such projects.

e. *Limitation*. The LHA will make housing assistance payments in increased amounts commensurate with rent adjustments or renegotiations under this Section, but only to the extent possible within the limits of the maximum total amount of annual contributions payable under Section 1.3(b) (1) of Part I of the ACC. No commitment is made by the LHA or the Government that such maximum total amount of annual contributions will be increased by reason of any such rent adjustments or renegotiations. However, the Owner may select eligible Families in light of this limitation so that his total receipts (Family rents and housing assistance payments) would be commensurate with the adjusted or renegotiated Contract rents.

7. *Contract amendment*. Any adjustment or renegotiation in Schedule "A" rents shall be incorporated by amendment to Schedule "A" of this Contract.

8. *Utilities*. The Owner agrees to provide and to pay promptly when due all utilities for the Premises, except to the extent that Families are obligated to pay directly for utilities for their respective units.

9. *Admission of families*. a. The Owner shall be responsible for the selection of Families, subject to certification of eligibility by the LHA. In the selection of Families, the Owner shall comply with the Government-approved Affirmative Fair Housing Marketing Plan, which is attached hereto and made a part

hereof, and with the applicable LHA admission regulations.

b. The Owner shall request the LHA, in accordance with procedures to be agreed upon between the Owner and the LHA, to make certifications of eligibility of selected Families and to approve proposed Owner-Family Leases. Within ----- days of the submission of any such request to the LHA, or the submission of additional information required by the LHA from the Owner, the LHA shall furnish the Owner with: (1) a determination that the Family is eligible; or (2) a determination that the Family is ineligible; or (3) a statement that specified additional information from the Owner is required to enable the LHA to make its determination. If the LHA delays in furnishing a determination or statement within said time limit and such delay results in an eligible unit remaining vacant, the Owner shall be entitled to housing assistance payments for the number of days of vacancy directly due to such delay.

10. *Nondiscrimination in housing.* a. Neither the Owner nor the LHA shall, in the selection or approval of Families, in the provision of services, or in any other manner, discriminate against any person on the grounds of race, color, creed, religion, sex, or national origin. No person shall automatically be excluded from participation in or be denied the benefits of the Housing Assistance Payments Program because of membership in a class such as unmarried mothers, recipients of public assistance, etc.

b. The Owner shall comply with all requirements imposed by Title VIII of the Civil Rights Act of 1968, Public Law 90-284, 82 Stat. 73 and any rules and regulations pursuant thereto, including the Affirmative Fair Housing Marketing Regulation, 24 CFR, Part 200.

c. The Owner shall comply with all requirements imposed by Title VI of the Civil Rights Act of 1964, Public Law 88-352, 78 Stat. 241; the regulations of the Department of Housing and Urban Development issued thereunder, 24 CFR, Subtitle A, Part 1, Section 1.1, et seq.; the requirements of said Department pursuant to said regulations; and Executive Order 11063 to the end that, in accordance with that Act, the regulations and requirements of said Department thereunder, and said Executive Order, no person in the United States shall, on the ground of race, color, creed, religion, or national origin, be excluded from participation in, or be denied the benefits of, the Housing Assistance Payments Program or be otherwise subjected to discrimination.

11. *Employment of project area residents and contractors.* The Owner shall comply and shall require each of its contractors and subcontractors employed in the performance of this Contract to comply (including compliance with the Government-approved affirmative action plan for utilization of project area businesses) with Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and the regulations and requirements of the Government thereunder, requiring that, to the greatest extent feasible, opportunities for training and employment be given lower income residents of the Project area and that contracts for work in connection with the Project be awarded to business concerns which are located in or owned in substantial part by persons residing in the area of the Project.

12. *Cooperation in equal opportunity compliance reviews.* The LHA and the Owner shall cooperate with the Government in the conducting of compliance reviews and complaint investigations pursuant to all applicable civil rights statutes, Executive Orders, and rules and regulations pursuant thereto.

13. *Flood insurance.* If the Project is located in an area that has been identified by the Secretary of Housing and Urban Development as an area having special flood hazards and if the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, the Owner agrees that the Project will be covered, during its anticipated economic or useful life, by flood insurance in an amount at least equal to its development or project cost (less estimated land cost) or to the maximum limit of coverage made available with respect to the particular type of property under the National Flood Insurance Act of 1968, whichever is less.

14. *Eviction.* The Owner shall not evict any Family unless the Owner complies with the requirements of local law, if any, and of this section. The Owner shall give the Family a written notice of the proposed eviction, stating the grounds and advising the Family that it has 10 days (or such greater number, if any, that may be required by local law) within which to respond to the Owner. The Owner must obtain the LHA's authorization for an eviction; accordingly a copy of the notice shall be furnished simultaneously to the LHA, and the notice shall also state that the Family may, within the same time period, present its objections to the LHA in writing or in person. The LHA shall forthwith examine the grounds for eviction and shall authorize the evictions unless it finds the grounds to be insufficient under the Lease. The LHA shall notify the Owner and the Family of its determination within 20 days of the date of receipt of the notice by the Family, whether or not the Family has presented objections to the LHA.

15. *Owner-family lease.* The Lease between the Owner (Lessor) and the Family (Lessee) shall contain the following provisions:

"ADDENDUM TO LEASE

"(Section 23 Housing Assistance Payments Program)

"The following additional Lease provisions are incorporated in full in the Lease between ----- (Lessor) and ----- (Lessee) for the following dwelling unit: ----- These provisions take precedence over any inconsistent or conflicting provisions of the foregoing Lease instrument.

"a. Of the total rent (\$----- per month), \$----- shall be payable by the Housing Authority (LHA) as housing assistance payments on behalf of the Lessee and \$----- shall be payable by the Lessee. These amounts shall be subject to change by reason of changes in the family income or composition, as determined by the LHA, effective as of the date stated in a notification of such change by the LHA to the Lessee and Lessor.

"b. The Lessor shall not discriminate against the Lessee in the provision of services, or in any other manner, on the grounds of race, color, creed, religion, sex, or national origin.

"c. The Lessor shall not evict the Lessee unless the Lessor complies with the requirements of local law, if any, and of this provision. The Lessor shall give the Lessee a written notice of the proposed eviction, stating the grounds and advising the Lessee that he has 10 days (or such greater number, if any, that may be required by local law) within which to respond to the Lessor. Because the Lessor must obtain the LHA's authorization for an eviction, a copy of the notice shall be furnished simultaneously to the LHA, and the notice shall also state that the Lessee may, within the same time period, present his objections to the LHA in writing or in person. The LHA shall forthwith examine the grounds for eviction and shall au-

thorize the eviction unless it finds the grounds to be insufficient under the Lease. The LHA shall notify the Lessor and the Lessee of its determination within 20 days of the date of receipt of the notice by the Lessee, whether or not the Lessee has presented objections to the LHA.

"d. The Lessor shall provide the following services (including security) and maintenance: [here insert the complete list as contained in Section 4d of the Housing Assistance Payments Contract].

Lessor -----
By -----
Date -----
Lessee -----
Date -----"

16. *Units not leased to eligible families.* a. If at any time, beginning six months after the execution of this Contract, the Owner fails for a continuous period of three months to have at least 80% of the Contract units leased by eligible Families, the LHA shall refer to the Owner available eligible Families interested in leasing units in the Project. If the LHA makes such referrals to the Owner and the Owner refuses to accept such Families without good reason, in the judgment of the LHA, the LHA, with Government approval, may on 30 days notice reduce the number of units under this Contract to not less than 111% of the number of units under lease by eligible Families.

b. As of the end of the initial term of this Contract and of each renewal term, the LHA, with Government approval, may reduce the number of units under this Contract to not less than 111% of (i) the number of units under lease by eligible Families at that time or (ii) the average number of units so leased during the last year, whichever is the greater number.

c. In the event of any reduction in the number of units under this Contract, in accordance with this Section, the LHA and HUD shall amend the ACC to reduce the amount of annual contributions payable thereunder to an amount commensurate with the lower number of units covered by this Contract.

17. *LHA and government access to premises and Owner's records.* The Owner shall permit the LHA and the Government or any of their duly authorized representatives to have access to the Premises and, for the purpose of audit and examination, to have access to any books, documents, papers and records of the Owner that are pertinent to compliance with this Contract including the verification of information pertinent to the monthly requests to the LHA for housing assistance payments.

18. *Default by the Owner.* a. A Default by the Owner under this Contract shall result if:

(1) The Owner has violated or failed to comply with any provisions of this Contract or of any Owner-Family Lease; or

(2) The Owner has failed to perform any of his obligations under this Contract or under any Owner-Family Lease; or

(3) The Owner has asserted or demonstrated an intention not to perform some or all of his obligations under this Contract or under any Owner-Family Lease.

b. Upon the determination by the LHA that a Default has occurred, the LHA, with approval of HUD, may notify the Owner that the LHA is terminating the Contract effective 30 days from the date of notice, unless within that period the Owner cures any non-compliance, or initiates a course of corrective action which will cure the non-compliance within such minimum additional time as may be necessary and agreed to by the LHA with the approval of the Government. If the LHA so notifies the Owner, it shall also send

RULES AND REGULATIONS

a copy of such notice to the Families, together with information regarding continued assistance.

19. *Default by the LHA.* a. A Default by the LHA under this Contract shall result if:

(1) the LHA has violated or failed to comply with any provisions of the Contract or failed to perform any of its obligations under this Contract; or

(2) this Contract at any time is held to be void, voidable, or ultra vires, or the power or right of the LHA to enter into this Contract is drawn into question in any legal proceeding; or

(3) the LHA asserts or claims that this Contract is not binding upon it for any reason, or otherwise asserts or demonstrates that it does not intend to fulfill its obligations under said Contract.

b. Upon the determination by the Government that a Default by the LHA has occurred, the following provision of the ACC (which is hereby made a part of this Contract), shall be applicable:

"[In such case] the Local Authority shall, if the Government so requires, assign to the Government all of its rights and interests in and to the Project, or such part thereof as the Government may specify and the Government shall continue to pay Annual Contributions with respect to dwelling units covered by Housing Assistance Payments Contracts in accordance with the terms of this ACC until reassigned to the Local Authority. After the Government shall be satisfied that all defaults with respect to the Project have been cured and that the Project will thereafter be operated in accordance with the terms of this ACC, the Government shall reassign to the Local Authority all of the rights and interests of the Government in and to the Project as such rights and interests exist at the time of such reassignment."

20. *Remedies not exclusive and non-waiver of remedies.* Any remedy provided for herein shall not be exclusive or preclude the Owner, LHA and/or the Government from exercising any other remedy available under this Contract or under any provisions of law, nor shall any action taken in the exercise of any remedy be deemed a waiver of any other rights or remedies available to such parties. Failure on the part of any such party to exercise any right or remedy shall not constitute a waiver of that or any other right or remedy, nor operate to deprive the party of the right thereafter to take any remedial action for the same or any subsequent default.

21. *Disputes.* a. Except as otherwise provided herein, any dispute concerning a question of fact arising under this Contract which is not disposed of by agreement of the LHA and Owner may be submitted by either party to the Government which shall make a decision and shall mail or otherwise furnish a written copy thereof to the Owner and the LHA.

b. The decision of the Government shall be final and conclusive unless, within 30 days from the date of receipt of such copy, either party mails or otherwise furnishes to the Government a written appeal addressed to the Secretary of Housing and Urban Development. The decision of the Secretary or his duly authorized representative for the determination of such appeals shall be final and conclusive, unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal proceeding under this Section, the appellant shall be afforded an opportunity to be heard and to offer evidence in support of his appeal. Pending final decision of a dispute hereunder, both parties shall proceed diligently with the perform-

ance of the Contract and in accordance with the decision of the Government.

c. This Section does not preclude consideration of questions of law in connection with the decisions rendered under paragraph a and b of this Section; Provided, however, that nothing herein shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

22. *Interest of members, officers or employees of LHA, members of local governing body or other public officials.* No member, officer, or employee of the LHA, no member of the governing body of the locality (city and county) in which the Premises are situated, no member of the governing body of the locality in which the LHA was activated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the Premises, during his tenure or for one year thereafter, shall have any interest, direct or indirect, in this Contract or in any proceeds or benefits arising from it.

23. *Interest of member of or delegate to Congress.* No member of or delegate to the Congress of the United States of America or resident commissioner shall be admitted to any share or part of this Contract or to any benefits which may arise therefrom.

24. *Nonassignability.* a. The Owner agrees that he has not made, and will not make any sale, assignment, or conveyance or transfer in any other form, of this Contract or the Premises, or any part thereof, or any of his interest therein, except with the prior consent of the LHA and the Government. The assignment by the Owner of the Agreement to a limited partnership of which the Owner is the general partner shall not be considered an assignment herein.

b. The Owner agrees to notify the LHA and the Government promptly of any proposed action covered by paragraph c of this section, and to request the written consent of the LHA and the Government in regard thereto.

c. For the purpose of this Section, a transfer of stock in the Owner in whole or in part by a party holding ten percent or more of the stock of said Owner, or a transfer by more than one stockholder or the Owner of ten percent or more of the stock of said Owner or any other similarly significant change in the ownership of such stock or in the relative distribution thereof in or with respect to the parties in control of the Owner or the degree thereof, by any other method or means, whether by increased capitalization, merger with another corporation, corporate or other amendments, issuance of new or additional stock or classification of stock or otherwise, shall be deemed an assignment, conveyance, or transfer with respect to this Contract or the Premises. With respect to this provision, the Owner and the party signing this Contract on behalf of said Owner, represent that they have the authority of all of the existing stockholders of the Owner to agree to this provision on behalf of said stockholders and to bind them with respect thereto.

25. *Entire agreement.* This Contract constitutes the entire agreement of the parties in respect to the Premises, and there are no oral agreements between the parties. No changes in this Contract shall be made except in writing signed by both the Owner and the LHA and approved by the Government.

Local Housing Authority

By:

Owner:

By:

Approved:

United States of America
Secretary of Housing and
Urban Development
By:

WARNING: 18 U.S.C. 1001 provides, among other things, that whoever knowingly or willfully makes or uses a document or writing containing any false, fictitious, or fraudulent statement or entry, in any matter within the jurisdiction of any department or agency of the United States, shall be fined not more than \$10,000 or imprisoned for not more than five years, or both.

[If the Project is to be completed and accepted in stages, execution of the Contract with respect to the several stages appears on the following pages of this Contract.]

EXECUTION OF CONTRACT WITH RESPECT TO PROJECTS COMPLETED AND ACCEPTED IN STAGES

STAGE 1

This Contract is hereby executed with respect to the units described in Exhibit A-1.

Local Housing Authority

By: Date:

Owner:

By: Date:

Approved:

United States of America
Secretary of Housing and
Urban Development
By: Date:

STAGE 2

This Contract is hereby executed with respect to the units described in Exhibit A-2.

Local Housing Authority

By: Date:

Owner:

By: Date:

Approved:

United States of America
Secretary of Housing and
Urban Development
By: Date:

STAGE 3

This Contract is hereby executed with respect to the units described in Exhibit A-3.

Local Housing Authority

By: Date:

Owner:

By: Date:

Approved:

United States of America Secretary of Housing and Urban Development
By: Date:

APPENDIX XIII

DETERMINATION OF FAMILY ELIGIBILITY AND LEASE APPROVAL

PART I

Request for Authority Determination

1. Request. The undersigned Owner and Family hereby request

(name of Local Housing Authority)

to issue a Certificate of Family Participation to the Family and to approve a proposed lease for a period of ... months, beginning ... 19... for a dwelling unit consisting of ... bedrooms and located at:

(street address and apartment number, if any)

Attached are Family income and other information pertaining to the Family, and the proposed lease, complete except for execution and amount of rent payable by the Family.

2. Security Deposit. The Family (will [] (will not []) require Authority assistance to pay security and/or utility deposits. The amount of the Owner's required security deposit (not to exceed one month's rent) is \$..... The amounts of the required utility deposits are:

(utility) \$.....
(utility) \$.....

Date
(Owner)

By:

Date
(Family)
(Present Address)

PART II

AUTHORITY DETERMINATION

(To be sent to the Owner and to the Family)

(Check applicable boxes.)

[] 1. Additional Information Required. To enable this Authority to make a determination regarding the eligibility of the Family headed by ... the following additional information is required from the Owner:

After the Owner has submitted the required information he will be notified by this Authority of its determination within the time period specified in his Agreement or Contract with this Authority.

[] 2. Determination of Eligibility. This Authority has determined that the Family headed by ... is eligible for participation in the Housing Assistance Payments Program of this Authority as set forth in a Certificate of Family Participation issued and signed by this Authority. In addition, this Authority has determined that the proposed lease and the dwelling unit meet the program requirements, and they are hereby approved.

Returned herewith are (a) the Certificate of Family Participation, attached as Part III, and (b) the proposed lease, completed by the Authority with respect to the portion of the lease rental which the Family shall be obligated to pay to the Owner. The Certificate shall be signed by the Family and the lease shall be signed by the Owner and the Family. A copy of each signed document shall be returned to the Authority.

Attached is a Security Deposit Agreement signed by this Authority, which shall be

signed by the Owner and the Family and returned to the Authority.

- [] Yes.
[] No.

3. Determination of Ineligibility.

[] a. This Authority has determined that the Family headed by ... is not eligible for participation in the Housing Assistance Payments Program of this Authority.

[] b. This Authority has determined that the proposed lease and/or dwelling unit does not meet the requirements of the Housing Assistance Payments Program of this Authority in the following respects:

Date

(Name of Local Housing Authority)

By:

(Name and Title)

PART III

CERTIFICATE OF FAMILY PARTICIPATION

(To be sent to the Owner and the Family)

1. Certification. The undersigned Authority hereby certifies that the Family headed by ... is authorized to participate in the Section 23 Housing Assistance Payments Program of this Authority by leasing a unit consisting of ... bedrooms in ...

(name and address of project)

owned by ... Under this program, the Authority makes housing assistance payments on behalf of participating families toward their rents for decent, safe, and sanitary dwelling units.

2. Rent. Under the rules and regulations of the Housing Assistance Payments Program, the Family will be obligated to pay \$..... toward the monthly lease rental; provided that this amount will be reduced by the LHA-determined allowance for any utilities to be paid directly by the Family, and such reduced amount will be specified in the lease. The amount of the Family's payment is subject to change by reason of changes in the income or composition of the Family.

3. Conditions. The Family agrees to perform all its obligations under the Housing Assistance Payments Program including the obligations to (a) provide such Family income information and records as may be required in the administration of the program; (b) permit inspections of its dwelling units at reasonable times and with reasonable advance notice; and (c) give at least 30 days notice to the Authority of the Family's intention to vacate the unit.

Date

(Name of Local Housing Authority)

By:

(Name and Title)

Date

(Family)

(Present Address)

Note: Appendices XIV and XV, which relate to internal HUD processing procedures, are not included herein, but do appear in the HUD New Construction Handbook.

APPENDIX XVI

SECURITY DEPOSIT AGREEMENT

1. The ... Housing Authority agrees to pay on behalf of the family headed by ... herein referred to as the Family, the following amounts as security deposits in connection with the leasing by said Family of a dwelling unit from ...

(Name of Lessor)

Deposit to Lessor \$.....
Deposit to
Deposit to
Total Amount of Deposits \$.....

2. On or before the effective date of the lease to be entered into between the Family and the Lessor, the Family agrees to pay \$..... to the Housing Authority as a first installment toward repayment of the total amount for security and/or utility deposits stated in item 1 above, leaving a balance of \$.....

3. The Family agrees to repay the stated balance by paying monthly installments of \$..... to the Lessor acting on behalf of the Housing Authority. These payments shall begin on the first day of the second month of the lease, and they shall be in addition to the Family's regular monthly rental payments to the Lessor.

4. The Lessor agrees to collect from the Family the monthly amounts specified in item 3 above and remit them to the Housing Authority, with the understanding, however, that failure on the part of the Family to pay such amounts shall not affect the Lessor's rights to housing assistance payments otherwise payable to him by the Housing Authority.

(Signature of LHA Representative) (Date)

(Signature of the Family Head) (Date)

(Signature of the Lessor Representative) (Date)

NOTE: Appendices XVII, XVIII, XIX, and XX, which relate to internal HUD processing procedures, are not included herein, but do appear in the HUD New Construction Handbook.

SHELDON B. LUBAR,
Assistant Secretary for Housing
Production and Mortgage
Credit—FHA Commissioner.

[FR Doc.74-9071 Filed 4-19-74;8:45 am]

1 Insert name of each utility company to which deposit is paid.

2 Insert an amount equal to the lesser of (a) one-twelfth of the Total Amount of Deposits stated in Item 1 above or (b) one month's gross family contribution.

3 Insert monthly amount to be paid by the Family, generally in the amount of one-eleventh of the balance due. However, this amount may subsequently be adjusted by the Housing Authority by reason of changes in income or rent-paying ability of the Family by amendment of this Agreement.

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